B Group

To be bound with 1944 files.

1943. **File No.** S. Kanara 1/43

Examined

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Suits Kanara.

Suit No. 194 of 1942

Dr. Channappa Gowada Mallan Gowda Palil — Plainliff

V/s

The Bombay Province — Defendant

Claim Rs 1000/-

P-115

C.A-11/45

File No. S. Kanara 1/43

Std. Scott. Slip 24-B

Plaint.

In the First Class Sub Judge's Court at Karwar.

Suit No. 194 of 1942.

Dr.Channappa Gowda Mallan Gowda Patil, age Lingayat,Medical Practitioner, Karwar. .... Plaintiff.

vs.

The Bombay Province. ..... Defendant.

Claim Rs. 1000/- for all purposes.

Plaintiff begs to submit as follows:-

1. Plaintiff,after passing his L.C.P.S.examination, joined the Medical Department of the Bombay Government as S.M.S.Officer. As required by the Rules,he passed the usual bond on 19th March 1937 by which he bound himself to serve on Military duty except in case of illness which rendered him unfit for Military service duly certified by a Commissioner Medical Officer.

2. On 15th June 1940 plaintiff received an order from the Surgeon General to the Government of Bombay that he was required for Military service as per terms of the bond passed by him. Plaintiff,therefore intimated that as he was suffering from hernia,internal and external plies he was not fit for Military duty. On 15th July 1940 the Civil Surgeon, Dharwar ordered plaintiff to present himself for medical examination as to his physical fitness for Military duty. Accordingly plaintiff was examined by the Civil Surgeon of Dharwar and as per plaintiff's state of health at the time he was found unfit for Military service, and orders regarding joining of Military service were held in abeyance.

3. But the Surgeon General seemed to be bent on sending plaintiff for Military duty inspite of plaintiff's illness which rendered him unfit for Military duty as it appeared from the Surgeon General's order dated 28-7-40 which required that plaintiff should undergo operation or other treatment. This order was clearly illegal as the bond passed by the plaintiff did not require that he could be compelled to undergo any treatment to render himself fit for Military duty when normally he was found unfit.

Still plaintiff in reply explained the nature of his illness in detail and agreed to join the Military service without operation or injection in case the Surgeon General thought that Plaintiff's hernia and piles would not be aggravated by Military service.

4. Plaintiff was therefore again ordered on 12th August 1940 by Civil Surgeon Dharwar to present himself for medical examination.Plaintiff was examined and operation or injection was proposed which plaintiff refused to undergo by giving detailed reasons in his letter dated 3rd September 1940. Inspite of this the Civil.Surgeon,Dharwar,merely to please the Surgeon General,stated that he considered plaintiff to be physically fit for Military duty.Plaintiff put in his pro--test against this opinion.Plaintiff was thereupon ordered to present himself before the Medical Board for examination. The Medical Board found that plaintiff could be rendered fit for Military duty onlyby operation, and plaintiff was asked if he was ready to undergo the operation, but plaintiff refused as the state of his health did not permit such a course.

5. Thereafter plaintiff was called twice for examina--tion before the Medical Board,Poona,oneee once in January 1941 and again in April 1941. As a result of these examina=--tions it was decided by the Medical Board,Poona, that - though plaintiff was not fit for Military duty owing to ill health, he was fit for inclusion in Category B mentioned in the memo dated14th October 1940 from the Director of -- Medical services in India.In reply,plaintiff brought to the notice of the Surgeon General that disabilities as a result of piles were not mentioned in the list shown under the new Category B and agreed only to join only on certain conditions and asked for leave to recoup his health. But this request was not granted. Plaintiff then requested that he may be placed before the Military Medical Board for examination. But even that request was refused and plaintiff was informed

that he could not even resign. Plaintiff was ultimately asked to pay Rs. 1000/- as penalty. The Collector of Kanara was asked to recover the penalty by coercive measure. Finally by the order dated 18th September 1941 plaintiff's services were terminated from the date of receipt of the memo for breach of conditions of serving on Military duty. Plaintiff was accordingly relieved of his duties on 22ns September 1941.

6. From the above correcpondence it is clear that contrary to the terms of the agreement the Surgeon General appeared to be bent on sending plaintiff on Mili-tary duty though owing to illness he was unfit to do the duties. When found medically unfit the attempt to put the plaintiff in B Category is also illegal and also opposed to the terms of the bond, as B Category service was not in existence and was not in the contemplation of the parties when plaintiff passed the bond. Therefore the order to relieve the plaintiff of his duties as S-M.S.Officer was wholly illegal and void and was not inforeable. Plaintiff therefore still continues to be S.M.S.Officer and is entitled to salary as such. According to an illegal order Rs. 1000/- have been wrongly and illegally recovered from plaintiff by coercive measures, and hence plaintiff is entitled to recover the same from Defendant. Plaintiff therefore, brings this suit for declaration and for refund of the amount illegally recovered from him. The cause of action for this suit arises on 22nd September 1941 at Karwar when plaintiff was relieved of his office and steps were taken to recover the penalty from him. Notice of suit under Section 80 of the Civil Procedure Code has been given to the Collector of Kanara on 10th October 1941. Deducting the period of notice, this suit is intime. This Court has jurisdiction to try this suit as the cause of action arose

7. Plaintiff, therefore prays for the following decree against the defendant :-

That it be declared that the order to relieve the

plaintiff of his duties as S.M.S.Officer is illegal and void and is not binding on ~~xxiiix~~ plaintiff and that he still continues as S.M.S.Officer of the Bombay Medi-cal Department and is entitled to the salaries legally ~~xxx~~ payable to him until he is taken back on duty and that the order to recover Rs.1000/- is also illegal and void and further prays that defendant be ordered to pay to plaintiff ~~xx~~ the sum of Rs. 1000/- illegally recovered from him by coercive measures. Valuation for this releif being Rs.1000/-

That a decree be passed in the above terms in plaintiff's favour against defendant and costs of suit be awarded against defendant. Necessary papers will be filed at the time of issues

Original signed by the Plaintiff.

I,Channappa Gowda Mallan Gowda Patil,hereby declare that the contents of the above plaint are true to my ~~x~~ knowledge.

21st November 1942 Orgl.signed by the Plaintiff.

.....

General Department.

The Surgen General has forwarded in these papers a summons of a suit filed against the "Province of Bombay" by Mr. C.M. Patil, who was formerly in the S.M.S., and who was discharged from service under the orders of Government, in the circumstances mentioned in para. 2 below.

2(1) Mr. Patil was taken up in the S.M.S. on 29-3-33. Subsequently, on confirmation, he executed a bond in the amount of Rs.1000/- binding himself to serve the Secretary of State, his successors and assignees, faithfully and diligently for the period of ten years in the S.M.S. and also, when required to do so, to serve on military duty..

(2) The S.G. selected Mr. Patil for military duty in June 1940. It appears that he was examined by the Civil Surgeon, Dharwar, in July 1940 and was found unfit for military service. The Surgeon General thereafter again asked the Civil Surgeon to examine Mr. Patil who reported that Mr. Patil had piles but that he refused to undergo operation or injection treatment and that in the Civil Surgeon's opinion he could perform military duties. After some further correspondence, Mr. Patil was finally examined by a Medical Board at Poona on 24th January 1941. The Board stated that as he was sufferring from internal piles and as he refused treatment by injection or operation, he was unfit for military duty.

(3) In March 1941, the Director General, Indian Medical Service, intimated to Surgeon General that S.M.S. Officers who may be placed in category 'B' mentioned

in the Medical Directorate's circular No. Z20413/2(DMS-5-a), dated 14th October 1940, may in future be deputed for military duty, vide his express letter No.34-4-41/13-R, dated 5th March 1941. The cases of all the S.M.S. Officers who were declared physically unfit for military duty had therefore to be reviewed and Mr.Patil, S.M.S., was placed before a Medical Board with a view to finding out if he could be placed in category 'B'. The Medical Board at Poona which examined Mr. Patil on 18th April 1941 declared him to be fit for inclusion in category 'B' vide certificate No.27, dated 18th April 1941. He was therefore warned to hold himself in reddiness for military duty- vide Surgeon General's Memo..No.S.231(80)A, dated the 23rd April 1941. Subsequently, he was ordered to join military duty on 1st June 1941. He was however unwilling to join military duty and offered to resign. The S.G. thereupon asked him to pay the penalty of Rs.1000 prescribed in his bond and told him that orders accepting his resignation would be issued after he made the payment.

(4) As there was some delay in payment of that sum, the S.G. submitted the case for orders whether the amount standing in Mr.Patil's name in the General Provident Fund Account should be impounded and Mr.Patil dismissed from service. Government after consulting the R.L.A., informed the S.G. that Mr.Patil's services should be terminated for breach of the condition of serving on military duty as agreed to by him in the bond executed by him and that steps should be taken to recover as an arrear of land revenue, the balance of the penalty of Rs.1000 due from Mr.Patil under the terms of the bond vide G.M.,G.D.No.4065/33-B, -Confl., dated the 17th September 1941. Mr.Patil was accordingly relieved of his duties on 22nd

September 1941 and a sum of Rs.1000 has also been recovered from him in full.

(5) Mr. Patil has filed this suit against Government for a declaration that the order to relieve the plaintiff of his duties as S.M.S.Officer is illegal and void and is not binding on plaintiff and that he still continues as S.M.S.Officer of the Bombay Medical Department and is entitled to the salaries legally payable to him uhtil he is taken back on duty and that the order to recover Rs.1000/- is also illegal and void and further prays that defendant be orddred to pay to plaintiff the sum of Rs.1000/- illegally recovered from him by coercive measures.

3. As stated above, Mr. Patil was discharged from Government service after consulting the R.L.A. Please see paragraph 4 of the R.L.A's memo. No.180-P-Confl., dated the 3rd September 1941, particularly to the following extract from it:-

"One of the conditions of service mentioned in the bond is that Mr.Patil should also when requirdd so to do serve on military duty, Mr. Patil has though required so to do, declined to serve on military duty. He has therefore committed a breach of one of the conditions of the bond and consequently his services can on that ground be lawfully terminated by Government and the amount of Rs.1000 can also be recovered from him under the terms of the bond."

In view of this, Government may defend the suit as recommended by the S.G. These papers may be transferred to the L.D. for necessary action after unofficial

cial reference.

15-1-43.

15/1.

n.o.b. to D. (with F.P.)
& 15-1-43

15/1

n.o.b. to Legal Deptt
(with F.P.)
32 compl
& 15/1/43.

No 4762/33-B.compl

C.D.

B-C- 20th Jan 1943.

Received on 25-1-43
1/c
25/1/43.

Immediate

To

The S.P., with his Court-pet &

Subject Suit.

Civil Suit no 194
Mr C.M. Patil Vs Province of B&.

Sir,

With reference to your letter
No S. 231 (10) /6151/A, d 14-1-43,
on the subject mentioned above, I am directed to
you ~~are~~ requested that facsimile Copy may be furnished
with a complete report under Rule 118
your Law Officers' Rules giving a full
and detailed ~~statement~~ of the circumstances
(in duplicate) which led to the filing of
the suit.
2 Your file no S.231 (10) A, is returned
herewith. It may please be forwarded to Govt
along with the one referred to above.
your etc

Immediate

Legal Department. 13

Seen and returned.

2. The suit filed by Dr. C.M. Patil can be defended. General Department is however requested to obtain a complete report from the Surgeon General under rule 118 of the Law Officers' Rules giving a full and detailed statement of the circumstances (in duplicate) which led to the filing of the suit, etc. and then transfer papers to this department for preparation of the brief and issue of orders.

1762/43

B.

57.

for Secretary to the Government of Bombay,
Legal Department.

.R. to G.D. No. 28-Conf. dated the 19th January 1943.

A draft letter from S.G. is put up on p 22 ante

20-1-43.

20-1

S-231(10)/6151/A

No. OF 194 3

PLEASE QUOTE THE No. AND DATE OF THIS LETTER.

TEL. ADDRESS :-HOSPITALS BOMBAY.
TELEPHONE No. 27908.

Letter.

OFFICE OF THE SURGEON-GENERAL
WITH THE GOVT. OF BOMBAY:
BOMBAY. 27th Jan. 1943.

FROM

THE SURGEON-GENERAL
WITH THE GOVERNMENT OF BOMBAY.
BOMBAY No. 1.

CONFIDENTIAL.
IMMEDIATE.

TO The Secretary to Government,
General Department,
Bombay.

SUBJECT :— Suit.
Civil Suit No.194.
Mr. C.M.Patil Vs Province of Bombay.

SIR,

Reference your letter No.4762/33-B-Confl., dated 20th January 1943.

I forward herewith a complete report in duplicate giving a full and detailed statement of the circumstances which led to the filing of the suit.

This office file, No.S-231(10)/A, is returned herewith.

4762/33
27 JAN 1943
Confl No. 83. 2

LK.25/1.

For Surgn:Genl:with the Govt:of Bombay.

forwarded to the Legal Department for ⊗ vide p 23.
further action.

28-1-43.

Immediate

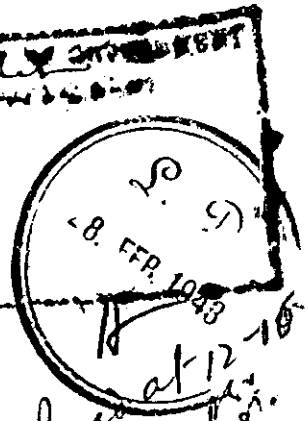
No 4764/33-B

General Department

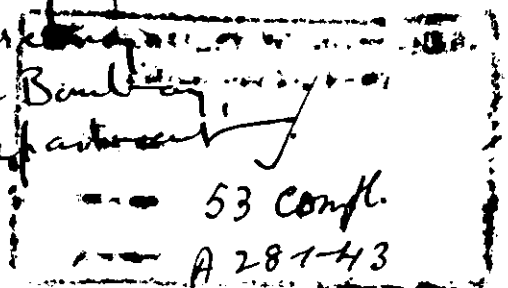
Bombay Castle 28-1-43.

Transferred to the Legal Department
for further action

2 The papers may be returned to
this Department when done with.



K B Kamath
28.1.43
Senior Assistant Secretary
to Govt
General Department



The plaintiff - Mr. C.M.Patil, L.C.P.S. was taken in the I.M.S. on 29-3-1933. On his confirmation in the service he had executed a bond on 13-3-1937 (copy enclosed) in accordance with the provisions of Recruitment Rule No.70 at page 76 Appendix 3 of the B.C.S.Recruitment Rules Manual), undertaking to serve on Military duty when required to do so and to pay a penalty of Rs.1,000 in default.

P.1 of file slipped
P.3 -do-
P.5 -do-
P.7 -do-
P.9 -do-
P.17 -do-
P.19 -do-
P.29 -do-
P.33 -do-
-do-
P.37 -do-
P.53 -do-
P.57 -do-
P.61 -do-
P.65 -do-
P.83 -do-

On a requisition received from the Director General, Indian Medical Service, calling for services of I.M.S.Officers for military duty, Mr. Patil was warned in June 1940 to hold himself in readiness for military service. Mr. Patil on 21-6-40 represented that he had developed Rt. Inguinal Hernia and external and internal piles with formation of fissures bleeding off and on, attended with acute pain, that he was therefore unable to serve with the Military Department and requested for exemption from military duty. His request was rejected. Orders transferring him on military duty were issued on 10-7-40 and he was asked to appear before the Civil Surgeon, Dharwar for examination as to his physical fitness for military duty. The Civil Surgeon found him unfit for military duty for the reason mentioned in the Medical Certificate No.2031 dated 18-7-40. The Civil Surgeon, Dharwar was thereupon asked to state whether Mr. Patil could not be treated for his piles by operation or injection. The Civil Surgeon agreed with this view but Mr. Patil was not prepared to undergo treatment by operation or injection. Mr. Patil was asked to be re-examined on 1-9-40 and the Civil Surgeon, Dharwar reported on 3-9-40 that in his opinion, - Mr. Patil could perform military duties. He was therefore once again warned to hold himself in readiness for military duty whereupon he appealed for examination, by a Medical Board. His request was granted and the Medical Board held at Sassoon Hospitals, Poona declared him unfit for military duty on 4-10-40 but expressed an opinion that Mr. Patil could be easily rendered fit by operation. It was ascertained from the Plaintiff whether he was prepared to undergo an operation but he declined stating that he was very nervous and that operation in his opinion was a temporary cure. He was again placed before a Medical Board on 2-1-41 but was declared unfit for military duty.

P.131 -do-
P.137 -do-

In March 1941, the Director General, Indian Medical Service intimated to this Office that I.M.S.Officers who might be placed in Category 'B' mentioned in the Medical Directorate's circular No.4-20413/2(I.M.S.-5-a) dated 14-10-40- copy enclosed, might in future be deputed for military duty - vide his express letter No.34-4-41/13-R, dated 5-3-41 (copy enclosed). The cases of all the I.M.S.Officers who were declared physically unfit for military duty had therefore to be reviewed and Mr. Patil was placed before a Medical Board with a view to finding out whether he could be placed in Category 'B'. The Medical Board at Poona which examined him on 18-4-1941 declared him to be fit for inclusion in Category 'B' vide certificate No.27 dated 18-4-41.

P.139 -do-
P.143 -do-
P.145 -do-
P.147 -do-
P.149 -do-
P.155 -do-

Consequently Mr. Patil was warned again on 23-4-1941 to hold himself in readiness for military duty. In reply Mr. Patil reported to this Office that he was prepared to join the military duties on the specific condition that if his health failed due to piles, he should be permitted to resign his Military Commission forthwith and allowed to join civil duties. If this request was not granted, he wanted three months' leave, to recoup his lost health. In the meantime orders transferring him on military duty were issued on 8-5-41 (copy enclosed) and he was informed that he must join military duty unconditionally and that if his health failed while on military duty, the Army Department would see whether to revert him to Civil or not. He was further informed that leave could not be sanctioned to him. Mr. Patil then asked to be examined by a Military Medical Board or allowed to resign. His request was not granted and he was informed on 23-5-41 that he could not be allowed to resign his appointment in the I.M.S. unless he paid Rs.1,000/- in accordance with the terms of the bond executed by him or else he should proceed on military duty. On 27-5-41 Mr. Patil reported that he could be resigned

resigning his appointment, and that he might be given time to pay the amount of Rs.1,000. He further requested that his G.P. Fund amount might be paid back to him, to make up the total of penalty. The G.P.Fund could not however be paid to him unless final orders accepting his resignation were issued. On 4-6-41 Mr. B.L.Patil was informed that if he did not pay to Government the sum of Rs.1,000 before 15-6-41, the District Magistrate would be requested to take the necessary action against him under the bond. Mr. Patil had then submitted on 12-6-41 an appeal to H.E. the Governor praying that the order of Surgeon General transferring him to Military Department be set aside on grounds of unfitness for Military duty. Government however saw no reason to interfere in the orders passed by the Surgeon General. On 17-7-41, Mr. Patil expressed his willingness to join military duties if his services were restricted to India but his request was rejected as he was placed in Category 'B' in accordance with which he was fit for service overseas not involving General service but only service normally encountered at the base or on the Line of Communication. Till September 1941, Mr. Patil did neither pay the full sum of Rs.1,000 and resign his appointment, nor did he proceed on military duty. He was purposely avoiding fulfilment of the terms of the bond executed by him. His services were therefore terminated with effect from 22-9-41, for breach of the condition of serving on military duty as agreed to in the bond and steps were taken to recover the balance of the penalty as arrear of land revenue as provided in the bond. The balance was finally recovered on 3-10-41.

p. 161 of the file slipped '2'

p. 175 -do-

h 183
p. 197 -do-

P.225 of the file slipped '4'

On 10-10-41, the plaintiff served a notice of suit under section 80 of Civil Procedure Code and on 21-11-42 he filed suit against the Province of Bombay in the Court of the J.D. Sub-Judge praying that a decree may be passed against the defendant in terms that the order to relieve the plaintiff of his duties by the D.M.S.Officer is illegal and void, that he still continues to be D.M.S.Officer of the Southern Command and that all pay and allowances legally payable to him, till he is reinstated and that the sum of Rs.1,000 - recovered from him, being illegal, be refunded to him, with costs.

P.255

Karwar Civil Suit No.194 of 1942.
Chronological Statement of Facts.

This is a suit filed by Dr.C.M.Patil, ex-S.M.S. Officer, against the Province of Bombay for a declaration that the order of his dismissal from service is illegal and for a refund of Rs.1000/- recovered from him as penalty.

2. The plaintiff was taken in service on 29th March 1933 as an S.M.S.Officer. On 19th March 1937 upon being confirmed he executed a service bond in the manner required by rule 70, Appendix D of the Bombay Civil Service Classification and Recruitment Rules thereby binding himself to serve the Secretary of State, his successors and assigns faithfully and diligently for the period of ten years in the S.M.S. and also, when required to do so, to serve on military duty.

vide p.9 of file P.

3. On 15th June 1940 the Surgeon-General to the Government of Bombay directed Mr.Patil to hold himself in readiness for military service.

vide p.1 of file

4. On 21st June 1940 Mr.Patil requested the Surgeon-General to exempt him from joining military duty as he was suffering from constipation for the last four years and had developed Rt Inguinal Hernia and external and internal piles with formation of fissures bleeding off and on attended with acute pain. However, his request was rejected on 27th June 1940.

vide p.3 of file Q

5. On 10th July 1940 Mr.Patil was transferred to the military duty and was asked to appear before Civil Surgeon, Dharwar for examination as to his physical fitness. On ~~12th~~ 18th July 1940

vide p.7 -do-

vide p.9 -do-

the Civil Surgeon found him unfit for military duty. p.17 of file Q.

6. On 10th August 1940 the Civil Surgeon General directed to re-examine Mr.Patil. On 3rd September 1940, the Civil Surgeon declared him fit for military duty and remarked that on the previous occasion he had certified Mr.Patil unfit as he had refused to undergo an operation or any treatment by injections. p.33 -do- p.35 -do-

7. On 15th September 1940 Mr.Patil filed an application requesting the Surgeon-General to place him before the Medical Board for their opinion as to his fitness or otherwise for military duty. pp.41-42 -do-

This request was granted and the Medical Board held at Sassoon Hospitals, Poona, declared him unfit for military duty on 4th October 1940, but expressed an opinion that Mr.Patil could be easily rendered fit by operation. p.57 -do-

8. On 11th October 1940 Mr.Patil intimated that he was very nervous to undergo an operation and that in his opinion an operation was only a temporary cure. p.65 -do-

9. On 24th January 1941 the Surgeon-General again placed the plaintiff before a Medical Board, but he was again declared unfit for military duty for the same reasons as before. p.87 -do-

10. On 5th March 1941 the Director General Indian Medical Service issued orders that S.M.S.Officers who might be placed in category "B" might in future be deputed to military duty. The cases of all these officers who were declared physically unfit for military duty had therefore to bereviewed and MrPatil was placed before a Medical Board with a view to finding out whether he could be placed in category "B". p.11 of file P.

On 18th April 1941 the Medical Board declared him fit for inclusion in category "B". On 8th May 1941 he was ordered to join military duty. He however showed his unwillingness to join and offered to resign instead.

p.137 of file Q

p.23 of file P

183 & 147
p./ of file QXX

p.149 -do-

On 23rd May 1941 he was informed by the Surgeon General that he could not be allowed to resign unless he paid a sum of Rs.1000/- in accordance with the terms of the Bond executed by him or else he should proceed on military duty.

11. On 4th June 1941 Mr.Patil was informed that if he did not pay to Government the sum of Rs.1000 before 15th June 1941 the District Magistrate would be asked to take the necessary action against him under the bond.

pp.175-177 -do-

12. On 12th June 1941 Mr.Patil appealed to His Excellency the Governor praying for an exemption from military duty. On 10th July 1941

p.183 -do-

he was informed by the Secretary to the Government, General Department, that Govt. saw no reason to interfere in the orders passed by the Surgeon General.

p.197 -do-

13. On 17th July 1941 Mr.Patil expressed his willingness to join military duty provided his services were restricted to India. His request

p.199 -do-

was however rejected.

14. As nothing further was known from Mr.Patil and as he did not appear to be joining the

p.225 -do-

military duty his services were terminated on 2 2nd September 1941 for breach of the condition of serving on military duty as agreed to in the bond executed by him. The peanlty under the indemnity bond was fully recovered uptil 9th

October 1941.

15. On 10th October 1941 Mr.Patil served on the Collector of Karwar a notice of suit under section 80, Civil Procedure Code, addressed to the Surgeon General, Bombay, and on 21st November 1942 filed the present suit praying for - pp.255-261 of file Q

(i) a declaration that the order to relieve him of his duties as S.M.S.Officer is illegal and void and that he continues to be the S.M.S.Officer

(ii) refund of the sum of Rs.1000 illegally recovered from him, and

(iii) costs, and other reliefs.

It is requested that, in future communications on this subject, the No. and date of this letter, and the distinguishing letters above the No. as given opposite, may be quoted, and the reply addressed to
THE SURGEON-GENERAL,
WITH THE GOVT. OF BOMBAY, BOMBAY 1.

Tel. address :—HOSPITALS BOMBAY.
Telephone No. 27903.

No. S. 231 (10)/6151/A of 1943 Gpl 23

Letter.

OFFICE OF THE SURGEON-GENERAL
WITH THE GOVT. OF BOMBAY :

Bombay, 11 Jan. 1943.

Confidential
VERY URGENT.

FROM Major-General R.H.Candy, C.I.E.,K.H.S.,I.M.S.,
THE SURGEON-GENERAL
WITH THE GOVERNMENT OF BOMBAY,
BOMBAY No. 1

To
The Remembrancer of Legal Affairs,
Bombay.

Subject:— Civil Suit No.194 of 1942.
Dr. C.M.Patil - Plaintiff.
Vs.
The Province of Bombay - Defendant.

I am to forward herewith letter No.352, dated 25th December 1942 from the District Government Pleader, Kanara, with the accompaniments and to furnish below the information as required by Rule 118 of the "Rules for the Conduct of the Legal Affairs of Government" :-

(i) The number of the Suit	-	Civil Suit No.194 of 1942.
(2) The date on which and the Court in which it was instituted.	-	16-12-1942. Court of the First Class Sub-Judge, Karwar.
(iii) The names of all the parties.	-	Dr. Channappagauda Mallanagauda Patil, Plaintiff. Vs. The Bombay Province.
(iv) The amount or value of the claim.	-	Rs.1000.
(v) The date fixed by the Court for the first hearing. and	-	29th January 1943.

4762/33 Confl

(vi) Notice of action was given on 17-10-1941. Attention is invited to this Office Confl. letter No.S.231(10)/6151/A, dated 3-12-1941 to Government.

Information required under rule 118(2)

(a) and (b).

A copy of the plaint (in duplicate) is enclosed.

Information required under rule 118(2)(c).

(i) The circumstances which led to the suit are explained in this office letters quoted below, addressed to Government:-

1) This office confidential letter No.S.231(10)/A, dated 9-11-1940.
2) -do- dated 28-6-1941.
3) -do- S-231(10)/A dated 18-8-1941
6157

(ii).

(ii) I recommend that the suit may be defended.

(iii) A reference is invited to U.O.Memo. No.180-P-Confl, dated 3-9-1941 addressed by the Remembrancer of Legal Affairs to Government.

Information under rule 118(2)(d)(e) and (f).

Vide the correspondence mentioned in (i) above and accompaniments.

The Surgeon General's Office orginal papers containing the correspondence mentioned above is forwarded herewith for information. The file may be returned when done with.

2. I am to add that the services of Mr. C.M.Patil, L.C.P.S. were terminated with effect from 22-9-1941. A copy of this Office Confidential Memo. No.S.231(10)/6157/A, dated 18th September 1941, terminating the service of Mr. Patil and copies of letters ~~dated~~ No.R.R.C./S.R.647 dated 26th September 1941 and No.R.R.C. 647, dated 12-10-1941 from the Collector of Dharwar are enclosed for information.

Major-General, I.M.S.,
Surgn:Genl:with the Govt:of Bombay.

Through - the Secretary to Government,
General Department, Bombay.

GEN[illegible] [illegible]T
PL[illegible] 4065/33
13 JAN 1943
Bar[illegible] 39

41 25

In the Court of the First Class Sub-Judge at Karwar,

Suit No.194 of 1942.

Dr.Channappa Gowda Mallan Gowda Patil.....Plaintiff.

vs.

The Bombay Province.....Defendant.

Claim Rs.1000/-

The written statement of the abovenamed defendant is as follows :-

1. The plaintiff's claim is denied.

2. The plaint discloses no cause of action as respects the prayer in clause 1 of para.7. The plaintiff held office at the pleasure of the Crown and could be discharged from service at any time. If he is aggrieved by the order terminating his services, his only remedy is by way of appeal to the higher administrative authorities and not by a civil suit.

3. With reference to para.1 of the plaint, the defendant denies that the purport of the relevant portion of the bond is correctly set out. The defendant will produce the original bond and rely upon the same.

4. The allegations in paras.3,4 and 5 of the plaint contain inaccurate and misleading statements. The correct position is as stated below: After the Civil Surgeon first reported that the plaintiff was unfit, he was asked to state whether the plaintiff could not be cured of his complaint. On 24th July 1940 the Civil Surgeon Dharwar reported that the plaintiff could be treated for piles by operation or injection and on 3rd September 1940 further reported that the plaintiff refused such treatment on the ground that he is nervous,and added :"On the previous occasion I made him unfit for military duty because he would report sick at any time with piles, otherwise I am of opinion that he can perform military duties." Thereupon, the plaintiff was considered fit, for military duty and asked to hold himself in readiness. The plaintiff/then requested that he should be examined by a Medical Board, and his request was granted. Although the Board first declared him unfit for military duty, it later certified thathe was fit to be included in category B officers who were intended to be given

such work, and in such conditions, as to

such work, and in such condition, as to cause them no strain. He was thereupon directed to hold himself in readiness to proceed on military duty. He then tried to impose conditions upon Government which Government declined to accept. He offerred to resign, but the resignation was not accepted by theSurgeon-General pending payment of the stipulated penalty of Rs.1000/- which the plaintiff promised to pay. Subsequently the plaintiff withdrew his resignation. As the plaintiff committed default in the performance of the duties and breach of the conditions stipulated in the bond the order to terminate his services was lawful andproper.

5. The allegations in para.6 of the plaint are denied. The order ofthe Surgeon-General detailing himfor military duty was in accordance with, andnot contrary to, the terms of the bond. The allegation that the attempt to put the plaintiff in category B is illegal is also denied. The order terminating his services is lawful.

6. The sum of Rs.1000/- recovered from the plaintiff has been lawfully recovered from the plaintiff in terms of the bond and the plaintiff is not entitled to refund thereof

7. The plaintiff is not entitled to any of the reliefs prayed for and it is submitted that the suit be dismissed with costs.

District Government Pleader, Karwar.

I, District Government Pleader, Karwar, do hereby declare that what is stated in paras. 1 to 7 above is true according to the information received and believed to be true. This verification is made at this day of 1943.

District Government Pleader, Karwar.

27

Surgeon General's Office.

Returned.

2. I have no objection to this office files being forwarded to the District Government pleader, Karwar if required by him. Accompaniments received with U.O. are returned herewith.

For Surgn:Genl:with the Govt:of B'bay.

U.O.R. to Govt. in the G.D., No.S.231(10)/6151/A, dated 19th Aug.1943.

GENERAL DEPARTMENT
File No. 4762/33
B 21AUG 1943
Serial No. 676

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No.
Sub No. 68-P-Cyll
Branch A/25-8-43

Please letters may now be returned to Legal Dept

24-8-43.

24.8

24/8

24/8

U.O.C. to Legal Dept
24-8-43

No. 169-L

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 26/4 August 1943.

Subject:- Karwar Civil Suit No. 194 of 1942.

.....

MEMORANDUM.

~~G.D.Files Nos. 4762/33 of 1941,~~ and Files "P" and Medical Department File No.S.231(10)A are forwarded herewith to the District Government Pleader, Kanara, in continuation of this office Memorandum No. 5316, dated 5th August 1943.

For Remembrancer of Legal Affairs.

To
The District Government Pleader, Kanara, Karwar.

Letter.

61
31

From

Rao Bahadur K.G.Chandavarkar,
District Government Pleader,Kanara.

To

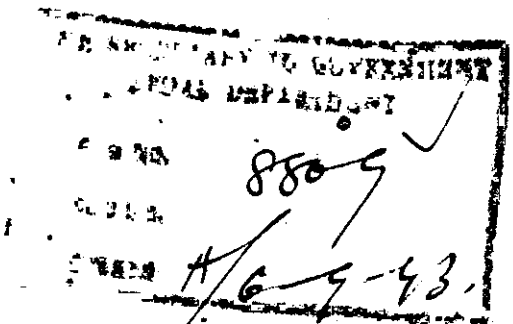
The Remembrancer of Legal Affairs,
Bombay

Subject: Karwar Civil Suit No.194-1942.

No. 244 of 1943. Karwar, 30-8-1943.

With reference to your letter No.169-L dated the 26th instant, I have the honour to state that the origi--nal bond executed by the Plaintiff Dr.C.M.Patil is not forthcoming in the papers sent in 2 files with your letter under reference. The same may please be arranged to be sent to me early. Only a copy of the said bond is included in file P.

District Government Pleader,
Kanara.



Submitted for information

The D.G.P. has asked for the original bona received by [illegible] to Bailiff. The same is not to be found in [illegible] papers. For orders

R&B As the letter may be shown to [illegible] 7/9 for necessary action.

P.O.R. to G.D No 6064 dated 9-9-43

1932

33 General Dept

The Dist Govt Pleader Kanara, wants the original bond executed by H.C.M. Patil The S.G. may be requested to forward the same urgently with the least possible delay.

11-9-43

11-9

W.O.M. to S.G. Sy.
11.9.43

SURGEON GE...
Diary No. 1148 Confl
11 S ? 1943
File No. S-231(10)A

Surgeon General's Office.

Returned.

2. The original bond executed by Mr.C.M.Patil, then S.M.S.Officer, is forwarded herewith.

For Surgn:Genl:with the Govt. of Bombay.

U.O. to Govt. in the General Department, Bombay, No.S-231(10)/A, dated 13th Septr. 1943.

L.D.53 Cafflet B ... L&L 746

16/9

This may be returned to L.D. with the bond

14-9-43.

14-9

L-D

8/9/43

L-hyd Dated 8/14/9/43

THE SECRETARY TO GOVERNMENT ... File No. 9/12 ... Date ... Branch A/15-9-43.

No.6264 ✓ 35 ~~Rs~~

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 1/9 September 1943.

Subject:- Karwar C.S.No.19[illegible] of 1942.

MEMORANDUM

With reference to his letter No.264. dated 30th August 1943, the District Government Pleader, Karwar, is informed that the original bond executed by the plaintiff is sent herewith

OC. RBR

for Remembrancer of Legal Affairs.

Subject for signature to F.S below Rs. 94 1/2 A. 19/9

The District Government Pleader,
Karwar.

Submitted after issue
await from officials
RSB. 4s
2019

37 65

Letter.

From

Rao Bahadur M.G.Chandavarkar,
District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject: Karwar Civil Suit No. 194 of 1942.
Dr. C. M. Patil ..... Plff.
Vs.
The Province of Bombay ... Deft.

Karwar, 7th October 1943.

I have the honour to forward herewith the copy of the issues framed by the F.C.Subordinate Judge,Karwar,in the above suit, for your information. The suit stands adjourned on 25th October 1943 for production of further documents.

District Government Pleader,
Kanara.

9918 ✓

A/15-10-43

O.S.No. 194 of 1942. 39 H

Issues.

1, Is it proved that the order to relieve Plaintiff of his duties as S.M.S.Officer is illegal and void as alleged by Plaintiff?

2. Is it proved that the question of dismissal of Plaintiff cannot be gone into by the Civil Court as contended by the Defendant ?

3. Is it proved that the order to recover Rs.1000/- from Plaintiff is illegal and void as alleged by the Plaintiff

4. Is the Plff.entitled to the declaration and the refund of the amount sought ?

5. What order ?

No more sought.

Sd.S.S.Alur.

F.C. Sub - Judge, Karwar.

Suits.

Kanara.

For a declaration that the order of the dismissal of Dr. C. M. Patil, S. M. S., is illegal.

41

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 5317.

Bombay Castle, 5th August 1943.

Letter from the Surgeon General with the Government of Bombay, No. S. 231(10)/6151-A, dated the 27th January 1943—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

In the Court of the First Class Sub-Judge at Karwar.

Civil Suit No. 194 of 1942.

Dr. Channappa Gowda Mallan Gowda Patil ... ... Plaintiff;

versus

The Province of Bombay ... ... Defendant.

Claim—Rs. 1,000 for all purposes.

Endorsement by the General Department, No. 4762/33-B, dated the 28th January 1943—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Kanara, No. 5316, dated the 5th August 1943—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—The defence of the suit should be sanctioned on the lines of the accompanying brief.

By order of the Governor of Bombay,

original P. N. Moos

P. N. MOOS,
Secretary to Government.

G. R., No. 5317, L. D., dated the 5th August 1943.

To

*The General Department,
*The Surgeon General with the Government of Bombay,
*The Collector of Kanara,
The District Government Pleader, Kanara at Karwar (with two copies of the brief).

*With a copy of the brief.

No. of 1943.

Copy forwarded for information and guidance to

submitted after issue
This may be filed in Sikkim 1/
43.
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A. P. A. dr 1.1/4

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by operation or injection, on the ground that he was nervous; but in respect of injections at any rate, his nervousness is difficult to understand. The Medical Board ultimately found him fit to be included in Category B, and that he fell within that category cannot be gainsaid, seeing that he was all along performing the duties of a Subordinate Medical Service Officer. And it was made plain that officers of this category were to be detailed only at base hospitals, etc., where they could perform their duties without undue strain. But the plaintiff first sought to impose conditions, and when they were not accepted, he offered to resign. He withdrew the resignation later but did not agree to proceed on military duty. This attitude gives point to his previous disinclination to take treatment: the real reason being not the risk involved in the treatment but the fear that if he got rid of his complaint he would be sent on military duty. The plaintiff's liability to do military duty was not under the bond conditional upon his being found medically fit in every way. The contention that Category B was not in existence when he executed the bond is therefore untenable. As he was found fit for duties assigned for officers of that class he had in any event no legitimate excuse to refuse to comply with the order detailing him for such duties. The plaintiff then committed breach of the conditions of the bond and was properly discharged from service.

4. As regards the second claim, the bond executed by the plaintiff provides "on any default or breach of any of the provisions hereinbefore mentioned in respect of his duties *which shall result in the termination of his service before the expiration of the period thereof he* (Mr. Patil) shall well and truly pay to the Secretary of State, his successors or assigns the said sum of Rs. 1,000, then the above written bond shall be void." The words italicised appear to show that when the breach of any of the

provisions of the bond results in the termination of his service before the expiration of the period of ten years, the payment of the penalty of Rs. 1,000 satisfies or exhausts the bond which thereupon "shall be void". The conditions mentioned in the bond are obviously included in the conditions of service during the period of ten years while the bond remains in full force. The plaintiff has, though required so to do, declined to serve on military duty. He has therefore committed a breach of one of the conditions of the bond and consequently his services were on that ground lawfully terminated by Government and the amount of Rs. 1,000 was properly recovered from him under the terms of the bond (*see* Exception to section 74 of the Indian Contract Act, 1872).

5. For all these reasons it should be urged that the suit fails and should be dismissed with costs.

KARWAR CIVIL SUIT No. 194 OF 1942.

Chronological Statement of Facts.

This is a suit against the Province of Bombay for a declaration that the plaintiff's dismissal from his post as S. M. S. Officer is illegal and for refund of Rs. 1,000 recovered from him.

2. The plaintiff was appointed S. M. S. Officer in 1933 and on 19th March 1937 executed a bond agreeing, *inter alia*, to serve on Military duty and providing that in case of default he would forfeit a sum of Rs. 1,000.

p. 1. 3. On 15th June 1940, the Surgeon General with the Government of Bombay directed the plaintiff to hold himself at the disposal of the Director General, Indian Medical Service, for military duty, and on 10th July 1940, he was directed to report himself for duty on 1st August 1940 to the Commandant, Indian Hospital Corps Depot, Poona.

p. 7. 4. On 18th July 1940, the Civil Surgeon reported that the plaintiff was examined and found unfit for Military

p. 17. duty as he was suffering from external and internal hemmorrhoids. In reply to a query from the Surgeon General, the Civil Surgeon stated, on 24th July 1940, that the plaintiff could be treated by operation or injection.

5. On 3rd September 1940, the Civil Surgeon reported that he had re-examined the plaintiff: that the plaintiff refused to take treatment by operation or injection on the ground that he was nervous; and added that on the previous occasion the Civil Surgeon had declared the plaintiff unfit only because he might have obtained leave by reporting himself sick, but that otherwise he can perform military duties. The Surgeon General, on 21st September 1940, informed the Civil Surgeon General that in the circumstances the plaintiff was considered medically fit for military duties and directed him to warn the plaintiff

p. 37. to hold himself in readiness for military duty.

6. At the plaintiff's request, he was sent to a medical

pp. 41-43. board, and on 4th October 1940, the Board certified that the plaintiff was at the moment unfit for military duty owing to piles but could be easily rendered fit by operation. On being asked, the plaintiff declined to

p. 57. undergo an operation.

7. On 24th January 1941, the Medical Board re-

p. 65. examined the plaintiff and reported that the plaintiff was still suffering from piles and refused treatment by operation or injection, and was unfit for military duty.

8. On 18th April 1941, the Medical Board re-examined the plaintiff and found him fit to be included in Category B mentioned in the Confidential Memorandum No. Z-29413/2 (D. M. S. 5-a), dated 14th October 1940, from the Director of Medical Services. On 23rd April

p. 139. 1941, the Surgeon General informed the plaintiff that as officers placed in Category B are to be deputed for military service he should hold himself in readiness for military duty.

9. On 4th May 1941, the plaintiff addressed a letter to the Surgeon General that he would be in readiness for

pp. 143-145. military duty on the specific condition that if his health should fail, he should be permitted to revert to his civil duties, and in the alternative requested for 3 months' leave. On 14th May 1941, the Surgeon General informed him that he must join military duty unconditionally and that should his health fail, the Army Department would decide whether he should revert to civil or not, and that leave could not be granted to him.

10. On 19th May 1941, the plaintiff requested that he should be re-examined by a medical board but the request was refused. The plaintiff was also informed that he could not be allowed to resign his appointment unless he first paid Rs. 1,000 in accordance with the bond, or else that he should proceed on military duty. p. 149.

11. On 23rd May 1941, the plaintiff informed the Surgeon General that he would be resigning his post, and asked for time to pay up Rs. 1,000. p. 155.

12. On 30th May 1941, the Surgeon General informed him that he should pay into Government Treasury at once the sum of Rs. 1,000 and that orders accepting his resignation would issue on receipt of treasury receipt. p. 157.

13. On 12th June 1941, the plaintiff submitted a Memorial to Government requesting that the orders of the Surgeon General directing him to proceed on military duty be set aside. On 10th June 1941, he was informed that Government saw no reason to interfere. p. 75. p. 183.

14. On 17th July 1941, the plaintiff submitted an application stating that he was prepared to join military duties if his services were restricted to India, but his request was refused. The plaintiff did not pay the money in full and on 31st August 1941, withdrew his resignation. p. 197.

15. On 18th September 1941, the Surgeon General passed orders terminating the plaintiff's services for breach of the condition as to military service contained in the bond. It appears that the sum of Rs. 1,000 was recovered from him in full. p. 225.

16. On 16th October 1941, the plaintiff gave a notice of suit to the Surgeon General, and on 21st November 1942, filed the present suit in the Court of the First Class Sub-Judge, Karwar, praying for a decree declaring that the order of dismissal is illegal, that he still continues to be S.M.S. Officer and is entitled to pay, and refund of Rs. 1,000.

Grounds of Defence.

The two claims made by the plaintiff can be conveniently considered separately.

2. With respect to the first claim, the plaintiff has no cause of action. He was a servant of the Crown in India and held office at the pleasure of the Crown: section 240 (*1*) of the Government of India Act, 1935. The bond does not contain any stipulation which binds Government to continue the plaintiff in service, and any such stipulation cannot bind Government [*see* Shenton *v.* Smith (1895) A. C. 299]. It should be pointed out that the order of dismissal was passed by the Surgeon General, who appointed him, after giving him repeated opportunity to obey the orders and to show cause. The only remedy open to the plaintiff was to appeal to the higher administrative authorities, namely, Government. He has no right to relief in a civil Court: (R. Venkata Rao *v.* Secretary of State, 39 Bom.L.R. 699 P. C.)

3. The Court is therefore precluded from inquiring into the question whether the order of dismissal was proper. It should, however, be affirmed that it was. The plaintiff had, by the bond dated 19th March 1937, bound himself to obey all the lawful orders of a Commissioned Officer of the Department, and to do military duty when required. The facts stated above show that the plaintiff declined to do military duty when required, and disobeyed the lawful orders of the Surgeon General in that behalf. He tries to justify himself on the ground that he was medically unfit for military duty. It appears that the only ailment he had was piles, and that otherwise he was quite fit. He declined to take curative treatment, either

47

Received on- 21-11-1942.

Registered on 8-12-1942.

Decided on- 23-11-1944.

Duration- 1 Year and 1 days.

IN THE COURT OF the F.C.Subordinate Judge, Karwar,

AT Karwar.

Civil suit No. 194 of 1942. Exh. 77

Pleaders. Dr. Channappa Gowda Mallan Gowda Patil, age
Dr. R.V. Lingayat, Medical Practitioner, Karwar.
Hamgekar. Plaintiff.

against

Government The Bombay Province.
Pleaders. Defendant.
Rao Bahadur
Chandavarkar. Claim- Rs. 1000/-.

The Plaintiff sues to have a decree in his favour in the following terms:-

(1) It should be declared that the order to relieve him (Plaintiff) of his duties as S.M.S.Officer is illegal and void and as such not binding on him.

(2) He therefore still continues to be a S.M.S.Officer of the Bombay Medical Department being entitled to the salary legally payable to him until he is taken back on duty.

(3) The order to recover Rs.1000/- from the plaintiff is illegal and void. and

(4) The defendant should be ordered to pay the plaintiff back Rs.1000 illegally recovered from him by coercive measure and costs.

2) The plaintiff's case is:- The plaintiff after passing his L.C.P.S Examination, joined the Medical Department of the Bombay Government as an S.M.S.Officer. According to the rules he passed the usual -- bond on March 19, 1937 by which he bound himself to serve on Military duty except in case of illness which rendered him unfit for - Military service on being duly certified by a Commissioned Medical Officer. On June 15, 1940 an order passed by the Surgeon General -- with the Government of Bombay requiring the plaintiff to serve on Melitary only according to the terms of the bond passed by him. -- Thereupon the plaintiff informed the Surgeon General that he was suffering from hernia, internal and external piles and therefore

not fit for Military duty. The Civil Surgeon of Dharwar ordered the plaintiff on July 15, 1940 to present himself for Medical Examination as to his physical fitness for Military duty. The plaintiff presented himself and he was examined by the Civil Surgeon of Dharwar as to -- his state of health at that time; and he was found unfit for Military service. Orders, therefore, regarding joining of the Military service by the Plaintiff were held in abeyance.

3) The Surgeon General passed an order on July 28, 1940 requiring the plaintiff to undergo operation or to take other treatment. From this letter it would appear that the Surgeon General was bent on -- sending the plaintiff on Military service despite his illness which rendered him for that service. The order of the Surgeon General was clearly illegal as the bond passed by the plaintiff did not require that he could be compelled to undergo any treatment to render himself fit for Military service when he was found unfit for that service. Still the plaintiff explaining the nature of his illness in detail -- agreed to join the Military service without undergoing operation or taking injection in case the Surgeon General thought that plaintiff's hernia and piles would not be aggravated by Military service.

4) Again the plaintiff was ordered on August 12,1940 by the Civil Surgeon of Dharwar to present himself for Medical Examination. The plaintiff was examined and operation or injuction was proposed which the plaintiff refused to undergo or take by giving detailed reasons in his letter dated September 3,1940. Inspite of this the Civil Surgeon Dharwar merely to please the Surgeon General stated on Examination that he considered the plaintiff to be physically fit for Military service. The plaintiff -- protested against this opinion, as a result of which he was ordered to -- present himself before the Medical Board for examination. The Medical -- Board found that the plaintiff could be rendered fit for Military duty only by operation and he was asked if he was ready to undergo the operation; but he refused as the state of his health did not permit such a -- course.

5) Thereafter the plaintiff was called twice for examination before the Medical Board Poona, once in January 1941 and again in April 1941. As a result of these examinations it was decided by the Medical Board

49 ~~5~~

that thought the plaintiff wasnot fit for Military service owing illhealth he was fit for inclusion in Category B mentioned in the memo dated 14th October 1940 issued by the Director of Medical Services in India. In reply plaintiff brought to the notice of the Surgeon General that disabilities arising from piles were not mentioned in the list shown in the new Category B and agreed to join only on certain conditions and also asked for leave to recoup his health. But this request was not granted. Thereupon the plaintiff requested that he may be placed before the Military Medical Board for examination. But even that request was refused and the plaintiff was informed also that he could not even resign. Ultimately he was asked to pay Rs.1000/- as penalty. Finally under the order dated 18th September 1941 plaintiff's services were terminated from the date of the receipt of the memo for breach of conditions of serving on Military duty. Plaintiff was accordingly was relieved of his duties on September 22 1941.

(6) From all the circumstances stated it is clear that contrary to the terms of the agreement the Surgeon General persisted on sending plaintiff on Military service even though he was physically unfit owing to his illness. The attempt to put plaintiff was illegal and opposed to the terms of the bond as B Category service was not in existance and was not in the contemplation of the parties when the plaintiff executed the bond. Therefore the order to relieve the -- plaintiff of his duties was holly illegal, void and unenforceable. The plaintiff therefore still continues to be an S.M.S.Officer and as such he is entitled to his usual salary. The order to recover the penalty of Rs. 1000/- from the plaintiff was evidently illegal; and the recovery of Rs. 1000/- from the plaintiff is consequently -- illegal and unjust. The plaintiff therefore has come to Court to have proper redress.

(7) The defence put in for the defendant is as follows:-

(8) The plaintiff's claim is denied.

The plaint discloses no cause of action in respects of prayer in clause No.1 of para 7. The plaintiff held office at the pleasure of the Crown and could be discharged from service at any time. If

he is aggrieved by the order terminating his services, his only remedy is by way of appeal to the higher administrative authorities and not by a civil suit.

(9) With reference para No.1 of the plaint, the defendant denies that the purport of the relevant portion of the bond is correctly set out. The defendant will produce the original bond and rely upon the same.

(10) The allegations in paras 3,4 and 5 of the plaint contain inaccurate and misleading statements. The correct position is as stated below; after the Civil Surgeon first reported that the plaintiff was unfit, he was asked to state whether the plaintiff could not be cured of his complaint. On 24th July 1940 the Civil Surgeon Dharwar reported that the plaintiff could be treated for piles by operation or injection and on 3rd September 1940 further reported that the plaintiff refused such treatment on the ground that he is nervous, and added: " On the previous occasion I made him unfit for military duty because he could report sick at any time with piles, otherwise I am of opinion that he can perform Military duties". Thereupon, the plaintiff was considered fit, for Military duty and asked to hold himself in readiness. The plaintiff then requested that he should be examined by a Medical Board, and his request was granted. Although the Board first declared him unfit for Military duty, it later certified that he was fit to be included in Category B Officers who were intended to be given such work, and in such condition, as to cause them no strain. He was thereupon directed to hold himself in readiness to proceed on Military duty. He then tried to impose conditions which Government declined to accept. He offerred to resign, but the resignation was not accepted by the Surgeon General pending payment of the stipulated penalty of Rs.1000/- which the plaintiff promised to pay. Subsequently the plaintiff withdrew his resignation. As the plaintiff comitted default in the performance of the duties and breach of the conditions stipulated in the bond, the order to terminate his servies was lawful and proper.

(11) The allegations in para No. 6 of the plaint are denied. The order of the Surgeon General detailing him for Military duty was in accordance with, and not contrary to, the terms of the bond. The allegation that the attempt to put the plaintiff in Category 'B' is also denied. The order

51 7

terminating his services is lawful.

(12) The sum of Rs. 1000/- recovered from the plaintiff has been lawfully recovered from the plaintiff in terms of the bond and the plaintiff is not entitled to refund thereof.

(13) The plaintiff is not entitled to any of the reliefs prayed for and that the suit should be dismissed with costs.

I s s u e s .

(14) The issues for decision as framed by Mr. S.S.Alur are:-

(1) Is it proved that the order to relieve plaintiff of his duties as S.M.S.Officer is illegal and void as alleged by the plaintiff?

(2) Is it proved that the question of dismissal of the plaintiff cannot be gone into by the Civil Court as contended by the defendant ?

(3) Is it proved that the order to recover Rs. 1000/- from the plaintiff is illegal and void and alleged by the Plaintiff ?

(4) Is plaintiff entitled to the declaration and the refund of the amount sought ?

(5) What order ?

F i n d i n g s .

(15) My findings are:-

(1) No. (2) The question of dismissal of plaintiff cannot be gone into by the Civil Court. (3) No. (4) No. (5) As ordered.

R e a s o n s .

(16) This is a suit against the Province of Bombay for a declaration that the plaintiff's dismissal from his post as S.M.S.Officer is illegal and void and that he still continues as S.M.S.officer, and as such is entitled to the salaries legally payable to him until he is taken back on duty; and for a refund of the sum of Rs. 1000/- recovered from him. In the pleadings some of the facts have been stated. But I think it desirable to state the facts in a chronological order as disclosed by the documents and correspondence produced and relied on by the parties. The relevant facts are The plaintiff was appointed as an S.M.S.Officer after he passed his L.C.P.S Examination; and on March 13, 1937 he executed a bond in favour of the defendant agreeing inter-alia, to serve on

Military duty and in case of default and breach of any of the provisions mentioned in the agreement which resulted in the termination of his services to pay a sum of Rs.1000/- Ex. 26 is the bond. After the present world war broke out, the Surgeon General with the Government of Bombay directed the plaintiff on June 15, 1940 to -- hold himself in readiness for Military duty (Ex. 38 A). The plaintiff reply to this dated June 21, 1940 (Ex. 71) was that he was suffering from Inguinal hernia and external and internal piles which rendered him incapable of serving on Military duty and that he should be exempted from such duty. He also said in his letter that he would produce a certificate from the Civil Surgeon Dharwar if so directed. He was -- informed on June 27, 1940 that he could not be exempted from Military duty(Ex.40). Then on July 10, 1940 he was directed to report himself on Military duty by August 1, 1940. In the mean-while as directed by the Civil Surgeon on July 15, 1940 the plaintiff appeared before him and got himself examined as to his physical fitness(Ex.43). On Examination the Civil Surgeon found the plaintiff to be unfit for Military duty: -- Ex.76 is his certificate dated July 13,1940. It runs thus:- " This is to certify that Mr.C.M.Patil, S.M.S. is found unfit for Military duty as he is suffering from external and internal haemorrhoids. He has also a fairly large opening to the right Inguinal Canal with impulse on -- coughing, (Slight bubonocele)". Subsequently the Civil Surgeon Dharwar made his report (Ex. 27) dated July 24,1940 to the effect that the - plaintiff could be treated for his piles by operation or injection, that he had been asked whether he was prepared to undergo treatment for his piles but that no reply had been received till then. Thereafter the Civil Surgeon Dharwar reported on September 3, 1940 that the plaintiff refused to take treatement by operation or injection on the ground that he was nervous and added that on the previous occasion he he had declared the plaintiff unfit only because he could report -- sick at any time with piles but that otherwise he could perform Military duty. The Surgeon General in reply to this report stated in his memorandum Ex. 29 dated 3-9-1940 that in the circumstances the plaintiff should be deemed to be physically fit and should be directed to hold himself in readiness for joining Military service. By his applica-

53 Ex

application Ex.30 dated 15-9-1940 the plaintiff applied to the Surgeon General that he should be examined by the Medical Board. Accordingly the plaintiff was examined by the Medical Board on 10th April 1940 and was found to be unfit at the moment. The Medical Board gave its opinion that he could be easily rendered fit by operation (Ex.31) The plaintiff on being asked declined to undergo any operation on the ground that he was nervous(Ex.32). The plaintiff also said that operation in his opinion was a temporary cure. The plaintiff was again examined by the Medical Board on April 18,1941 which certified that he was fit for inclusion in Category B:-Ex.33 is the certificate

P.No.8. of the Medical Board. Accordingly the plaintiff was called upon to hold himself in readiness for Military duty being placed in Category B. The order in this regard dated 23-4-1941 (Ex.56) reads:- "The Medical Board at Poona which examined you on 18-4-1941 is of opinion that you are fit for inclusion in Category 'B' mentioned in the confidential memorandum No. Z-20413/2(D.M.S.5-a), dated 4th October 1940 from the Director of Medical Services in India (extracts enclosed As officers placed in Category 'B' are be deputed for Military duty you are directed to hold yourself in readiness for Military duty. Further orders in the matter will be issued to you in due course" In reply the plaintiff wrote his letter Ex.60 dated 4-6-1941 expressing his willingness to join Military duty and imposed a condition that should his health fail due to the condition of piles he should be permitted to revert to his civil duties. And in the alternative he asked for 3 months leave to recoup his health. On May 14, 1941 the plaintiff was informed by the order Ex. 61 that he should join the Military duty unconditionally. The order says:-" Mr.C.M. Patil, S.M.S. must join military duty unconditionally as per orders issued in this office memo No. S.231(10)A dated 8th May 1941. If his health fails while on military duty, the Army Department will whether he should revert to civil or not. Leave cannot be sanctioned to him". Thereafter it appears that the plaintiff applied for being examined by the Military Medical Board offering also to resign his post. The reply to this is contained in the communication Ex.63 -- dated 23-5-1941 which is to this effect:- " Your request for placing you before a Military Medical Board for examination cannot be granted

You cannot be allowed to resign your appointment in the S.M.S. unless you pay up first Rs.1000/- in accordance with the terms of the bond executed by you or else you should proceed on Military duty on the due date as already ordered". Thereafter plaintiff was informed on May 30, 1941 that orders accepting his resignation would be passed on the receipt of a treasury receipt for the payment of Rs.1000/- and that if the amount was not paid he should proceed on Military duty according to his undertaking. It appears that the applicant presented a memorial to the Government of Bombay for setting aside the order of the Surgeon General and that his memorial was rejected, as the Government memorandum dated 10-7-1941 (Ex.65) would show. The Surgeon General by his -- final order Ex.37 dated 18-9-1941 terminated the plaintiff's services for breach of the condition of serving on Military duty as agreed to in the bond executed by him. He was to be relieved of his duties from the date of receipt of that order by the Civil Surgeon Karwar. The - order also stated that in consultation with the Collectors of Kanara and Dharwar a sum of Rs.1000/- due as penalty should be recovered as an arrear of land revenue from the plaintiff. It appears that the penalty of Rs.1000/- was subsequently recovered from the plaintiff who brought the present suit on giving his notice Ex.38.

17) The questions for decision now in this case are; whether the termination of the plaintiff's services by the Surgeon General is illegal and void: whether the Civil Court can inquire into this question: and whether the plaintiff is entitled to the refund of Rs.1000/- recovered from him by the Government. Under Section 240 (1) of the Government of India Act 1935 the tenure of office of persons employed in Civil capacities in India is during His Majesty's pleasure. The section lays down:-" Except as expressly provided by this Act every person who is a member of a Civil Service of the Crown in India, or holds any Civil -- post under the Crown in India, holds office during His Majesty's pleasure" The provisions of this Section were formerly contained in section 96 B of the Government of India Act 1915 as amended by Act of 1919. In the decision under section in R. Venkata Rao Vs. Secretary of State 39 -- Bombay Law Reporter page 699 it has been held:- " Under section 96 B of the Government of India Act, 1915, every servant of the Crown holds his

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office during the pleasure of the Crown and there is no right of action against Government in a Court of Law for his dismissal from service, whether rightful or wrongful, or for breach of any of the rules made there-under on the part of Government. His proper remedy in such a case is by administrative process and not by law suit". This principle of law was laid down in the case of Shenton Vs. -- Smith (1895) A.C.229. It was held in that case that unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown: not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement as is well understood throughout the public service; and that if any public servant considers that he has been dismissed unjustly his remedy is not by law suit but by an appeal of an official or political kind. The same principle was laid down in Krishnaji Vs. Secretary of State 39 Bombay Law Reporter page 807. In this case the application of the principle was extended even to the cases where there is contractual relation to the contrary. The decision in Shenton Vs. Smith was considered and approved together with the other cases mentioned at page 814. The statement of the law made by Halsbury in his laws of England -- (Volume VI second Edition page 608 paragraph 782) has been quoted there with approval. That statement is ;- Except where it is otherwise provided by statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown, and all, in general, are subject to dismissal at any time without cause assigned; not will an action for wrongful dismissal be entertained even though a special contract be proved". In view of this law, this Court it is evident is precluded from considering the validity or otherwise of the Surgeon Generalls order terminating the plaintiff's evidence inspite of the fact that the plaintiff passed the bond Ex.26 to which reference will be made presently. If that is so, the plaintiff cannot clearly and naturally claim any refund of money or damage as he has now done.

(18) Now I come to the bond and the terms thereof. Under the bond, the plaintiff held himself firmly bond unto the Secretary of State for India in Council, in the sum of Rs.1000/- to be paid to

the Secretary of State in case of default of duty or breach of any of the provisions mentioned in the body of the bond.

(19) The conditions imposed are that the plaintiff" shall faithfully and diligently serve the Secretary of State, his Successors and Assigns for the period of ten years in the Subordinate Medical Department in the capacity of a Subordinate Medical Service Officer and in particular shall and willingly and submissively at all times obey all the lawful orders and commands of the Secretary of State, his Successors and Assigns and of any Commissioned Medical Officer * O.P. of the Department .... and especially shall when ordered so to do an as ordered proceed to any place where his services shall be required and shall on no account (except in case of illness duly certified in writing by a Commissioned Medical Officer) without the orders or sanction of the said Secretary of State etc., leave any station or place to which he shall have been appointed or in any -- way terminate his service before the end of the said period of -- 10 years .... and shall also when required so to do serve on Military duty and while engaged on such Military duty shall strictly confirm to and obey and observe all orders and regulations ....and on any default or breach of any of the provisions mentioned in respect of his duties which shall relsult in the termination of his services before the expiration of the period thereof shall well and truly pay to the Secretary of State etc., the said sum of Rs.1000/-. It is further stated that on the payment of Rs. 1000/- the bond shall be void and that otherwise it shall remain in full force and virtue. The main argument for the plaintiff is that owing to his suffering from piles both internal and external and herina he was not pyssically fit for Military duty and that he was even on Examination found to be physically unfit. It has been seen that after ge was called to hold himself in readiness to join Military service he was examined by the Civil Surgeon Dharwar and found to be physically unfit. But that -- Medical Officer subsequently qualified his opinion saying that the plaintiff's ailment would be easily cured by operation or injection. Similar was the opinion given by the Medical Board which on the second occasion certified that the plaintiff was fit in Category B. The plaintiff showed his determination unwillingness to take treatement either

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by way of operation or injection on the ground that he was nervous He even expressed his own opinion in face of the opinion of his superiors both in office and qualifications that operation was temporary cure. Then as the facts stated would show two alternativ were placed before him by the Surgeon General and they were ~~(1)ei-~~ (1) either he must forthwith unconditionally proceed to join Military service (2) or he must pay the penalty of Rs.1000/- on the payment of which the question of accepting his resignation which he had offerred to tender would be considered. On March 23, 1941, Plaintiff informed the Surgeon General that he would resign his post and that time should be granted to him for paying up Rs.1000/ The answer to this was in the negative as seen before. The plaintiff thus instead of complying with the definite orders passed now and then by the Surgeon General expressed his unwillingness to join Military duty on condition that should his health fail due to the condition of piles he should be permitted to revert to his -- Civil duty. Ultimately however the decision of the Surgeon General went against him on the ground that there was default of duty and breach of condition. The question is now whether the plaintiff was right or the Surgeon General. It is argued and argued with great vehemence that the backeted clause in Ex.26, the bond viz "Except in case of illness duly certified in writing by a Commissioned M- Medical Officer" justifies the plaintiff's conduct in declining to go on Military duty when he was found to be physically unfit. It is further argued with still greater vehemence that the B category which was not at all included in the bond was wrongly and illegally made applicable to the plaintiff the duties mentioned in which he was not in any way bound to perform. The bond says that when required so to do the plaintiff shall serve on Military duty without mentioning and specifying what those duties were. The term "Military "duty" which is a general one must be taken to mean and included all duties which shall have to be performed by a Medical Officer when posted to Military stations or Military Head Quarters or Basis usually during war times Category B service was introduced no doubt after the plaintiff passed the bond. But it does not add anything more to what is contained in the bond itself nor vary or

* O.P. No. 12.

change its terms. The three different categories namely A. B. and C were introduced as a policy regarding the disposal of Indian personnel unfit for general service overseas. The nature of the general service overseas must be indeed of a very strunous as dons and severe type involving naturally greater physical exertion and strain. Looking to the duties contained in category B it would appear that the work to be done by the plaintiff was of a lighter and milder type -- being more or less similar to the duties he was then doing as S.M.S. Officer and he has been doing as a Medical Practitioner since the -- termination of his services. If thus when the plaintiff was asked to render the same duties of a milder nature (i.e., those contained in 'B' category) having regard to his state of health and on the recommendation of the Medical Board and the Surgeon General can't be said on any stretch of imagination cannot stand to reason even that the category 'B' was wrongly and illegally inserted as it were in the bond. In my opinion the answer must be in the negative. and the three categories were only adjusments to suit different cases. And it must be remembered that those duties are to be performed by the Subordinate Medical Officer who is in the opinion of the Medical Officer fit for service overseas not involving general service, but only service normally encountered at the Base or on the Line of Communication. When the Medical Board gave its opinion on the second occasion that the plaintiff was fit for inclusion in category 'B' and when thereafter the Surgeon General called upon the plaintiff to hold in readiness to go on Military service, I think the plaintiff ought to have obeyed the Surgeon General's order which was perfectly legal and valid without imposing any sort of condition and without in any way trying to avoid. If after joining, the Military Medical Board had found the plaintiff to be unfit he would have certainly been exempted from Military duty. Instead of following such an open and straight course open to him the plaintiff came on I should think(as just now stated) finding opportunity to evade joining the Military service. It should be noted that his joining the Military service was not conditional on his being physically and medically fit in all ways. I do not think the Surgeon General or the Medical Board were so unreasonably bent as hinted as to ask the plaintiff to join Military duty even to the detriment of his health. It cannot for a moment be conceived that they ignored altogether his health

* O.P.N

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and welfare. In my opinion as the B category included duties involving lesser strain and exertion than the general military duties, the plaintiff would have in no way suffered in his health as he seems to have wrongly apprehended and it was clearly wrong on his part to follow dilatory tactics, first, expressing clear disinclination and then going the lenght of offering to resign, not to speak of his application for leave. If that is so, it is clear that
.P.No.14. the plaintiff had no excuse or justification to adopt the course of conduct, he did; and it obviously involved not only the disobedience of his superiors' orders but also the clear breach of the condition contained in the bond which is the sheet-anchor of his case. That being so, the action taking by the Surgeon General subsequent to the Plaintiff's expression of conditional willingness to serve on military service was perfectly justified and legal.

(20) To sum up, (1) this Court is precluded from entertaining the legality or illegality of the termination of the plaintiff's services; (2) the order of termination was justified, legal and valid; (3) there was no excuse justification for the plaintiff's conduct in disobeying the orders of his superiors and (4) consequently the plaintiff cannot claim the refund of the sum of Rs.1000/- recovered from him.

(21) The result is that the plaintiff must fail.

Order.

The plaintiff's suit is dismissed with costs. The plaintiff to pay defendant's costs.

22nd November 1944. Sd/H.P.Suryawanshi.
F.C.Subordinate Judge.

Decree.

Exh. 78.

In the First Class Sub Judge's Court at Karwar.
Suit No.194 of 1942.

Dr. Channappa Gowda Mallan Gowda Patil, age Lingayat, Medical Practitioner, Karwar. Plaintiff.

versus

The Bombay Province. Defendant.

Claim Rs. 1000/- for all purposes.

Plaintiff begs to submit as follows:-

Plaintiff, after passing his L.C.P.S. examination, joined the Medical Department of the Bombay Government as S.M.O. Officer, As required by the rules, he passed the usual bond on 19th March 1937 by which he bound himself to serve on Military duty except in case of illness which rendered him unfit for military service duly certified by a commissioner Medical Officer.

On 15th June 1940 plaintiff received an order from the Surgeon ~~Gen~~ General to the Government of Bombay that he was required for Military service as per terms of the bond passed by him. Plaintiff therefore intimated that as he was suffering from hernia, internal and external piles he was not fit for military duty. On 15th July 1940 the Civil Surgeon of Dharwar ordered plaintiff to present himself for medical examination as to his physical fitness for military duty. Accordingly plaintiff was examined by the Civil Surgeon of Dharwar and as per plaintiff's state of health at the time, he was found unfit for military service, and orders regarding joining of Military service were held in abeyance.

But the Surgeon General seemed to be bent on sending plaintiff for military duty inspite of the plaintiff's ill-ness which rendered him unfit for military duty as it appeared from the Surgeon-General's order dated 28/7/1940 which required that plaintiff should undergo operation or other treatment. This order was clearly illegal as the bond passed by plaintiff did not required that he could be compelled to undergo any treatment to render himself fit for military duty when normally he was was unfit. Still plaintiff in reply explained the nature of his illness in detail and agreed to join the military service without

out

without operation or injection in case the Surgeon General thought that plaintiff's hernia and piles would not be aggravated by military service.

4. Plaintiff was therefore again ordered on 12th August 1940 by the Civil Surgeon of Dharwar to present himself for medical examination. Plaintiff was examined and operation or injection was proposed which plaintiff refused to undergo by giving detailed reasons in his letter dated 3rd September 1940. Inspite of this Civil Surgeon Dharwar, merely to please the Surgeon General, stated that he considered plaintiff to be physically fit for military duty. Plaintiff put in his protest against this opinion. Plaintiff was thereupon ordered to present himself before the Medical Board for examination. The Medical Board found that plaintiff could be rendered fit for military duty only by operation, and plaintiff was asked if he was ready to undergo the operation, but plaintiff refused as the state of his health did not permit such a course.

5. Thereafter plaintiff was called twice for examination before the Medical Board, Poona, once in January 1941 and again in April 1941. As a result of these examinations it was decided by the Medical Board, Poona that though plaintiff was not fit for military duty owing to illhealth, he was fit for inclusion in Category B mentioned in the memo dated 14th October 1940 from the Director of Medical Services in India. In reply, plaintiff brought to the notice of the Surgeon General that disabilities as a result of piles were not mentioned the list shown under the new Category B and agreed to join only on certain conditions and asked for leave to recoup his healt. But this request was not granted. Plaintiff then requested that he may be placed before the military Medical Board for examination. But even that request was refused and plaintiff was informed that he could not even resign. Plaintiff was ultimately asked to pay Rs. 1000/- as penalty. The Collector of Kanara was asked to recover the penalty by coercive measures. Finally by the order dated 18th September 1941 plaintiff's services were terminated from the date of receipt of the memo for breach of conditions of serving on military duty. Plaintiff was accordingly relieved of his duties on 22nd September 1941. Rs. 1000/- have been wrongly and illegally recovered from plaintiff by coercive measures. Plaintiff therefore prays for the following decree against

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defendant. That it be declared that the order to relieve plaintiff of his duties as S.M.O. Officer is illegal and void and is not binding on plaintiff and that he still continues as S.M.O. Officer of the Bombay Medical Department and is entitled to the salaries legally payable to him until he is taken back on duty and that the order to recover Rs. 1000/- is also illegal and void and further pray that defendant ~~xx~~ be ordered to pay plaintiff the sum of Rs. 1000/- illegally recovered from him by coercive measures, valuation for this relief being Rs. 1000/-

That a decree be passed in the above terms in plaintiff's favour against defendant and costs of suit be awarded against defendant.

This suit coming on this day for final disposal before H.P.Suryanshi, Esquire, LL.B., F.C.Subordinate Judge, Karwar in the presence of Mr. R.V.Gangolli pleader for plaintiff and Rao Bahadur ~~xx~~G. Chandavarkar pleader for defendant, it is ordered as follows:- The plaintiff's suit is dismissed with costs. The plaintiff to pay defen-

defendant 's costs Rs- 50/- (Rupees fifty only).

Costs of suit.

Plaintiff.		Defendant.	
Stamp. Ex. 1.	75-0-0	Exhs. 6 to 10. and 12.20	3-10-0
Vakilpatra Ex. 2.	0-8-0	Pleader's fee.	50-0-0
Ex. 1 Process	2-0-0		
Exhs. 16,23.	1-2-0		Rs. 53-10-0
Pleader's fee.	50-0-0		
costs of Exhs. 16 and 23. disallowed.	Rs.128-10-0 1-2-0	Costs of Exhs. 6to 10 and 12,20 disallowed.	3-10-0
	Rs. 127-8-0		Rs. 50-0-0

Given under my hand and the seal of the Court this 22nd day of November 1944.

Prepared by Sd. S.P.Naik, Karkun.

Sd. H.P.Suryawanshi.
F.C.Subordinate Judge,
Karwar.

Plaintiff's pleader.
Defendant's pleader.

Letter.

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From

Rao Bahadur M. G. Chandavarkar,
District Government Pleader, Kanara, Karwar.

To

The Surgeon General, Bombay.

Subject:- Civil Suit No. 194 of 1942.
Dr. C. M. Patil..Plff vs. The Province of Bombay.. Deft.

No. 285 of 1944. Karwar, 12th December 1944.

In continuation of my letter No. 270 of 22-11-1944 I have the honour to forward herewith certified copies of judgment and decree in the above suit for favour of perusal. The copy of decree may please be returned for taking legal steps to recover the amount of costs due from the plaintiff.

Sd. M. G. Chandavarkar.

District Government Pleader,
Kanara.

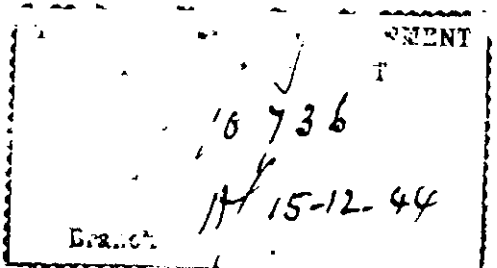
P.T.O.

No. 287 of 1944.
Office of the Govt. Pleader,
Karwar, 12th December 1944.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay, together with uncertified copies of decree and judgment, for information.

District Government Pleader,
Kanara.

14/12



Suits.

Kanara.

For a declaration that the order of the dismissal of Dr. C.M. Patil, S.M.S., is illegal.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 192
Bombay Castle, 8th January 1945.

Read Government Resolution, Legal Department, No.5317, dated the 5th August 1943.

Endorsement by the District Government Pleader, Karwar, No.271, dated the 22nd November 1944 - Forwarding a copy of his letter to the Surgeon General, Bombay, No.270 of even date, and stating that the suit noted in the margin was decided by the First Class Sub-Judge, Karwar on 22nd November 1944, when the following order was passed:-

In the Court of the First Class Sub-Judge at Karwar. Civil Suit No.194 of 1942. Dr.Channappa Gowda Mallan Gowda Patil .....Plaintiff; versus The Province of Bombay.....Defendant. Claim-Rs.1,000 for all purposes.

"The plaintiff's suit is dismissed with costs. The plaintiff to pay defendant's costs." ~~Rs.50/- (Rupees fifty only).~~

Endorsement by the District Government Pleader, Karwar, No. 287, dated the 12th December 1944, - Forwarding uncertified copies of the judgment and decree.

RESOLUTION.- The result of the suit is recorded.

By order of the Governor of Bombay,

Original

For (P. N. MOOS,
(Secretary to Government.

To

The General Department;

The Surgeon General with the Government of Bombay;

The Collector of Kanara.

69 H5

No. 794
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 25th January 1945.

Subject:- Civil Suit No. 194 of 1942.
Dr. C.M. Patil
v
The Bombay Province

MEMORANDUM.

With reference to the subject noted above the District Government Pleader, Kanara is requested to arrange for the return of the Surgeon General's File No. 231(10) A which was sent to him with this office memorandum No. 169L dated the 26th August 1943.

o/c.
For Remembrancer of Legal Affairs.

To
The District Government Pleader, Kanara,
Karwar.

Issued
25/1

Submitted for signature.

2. The memo is put up in view of G.D. note at p. 14 ante.

25/1 P.M.

G. D. papers returned under

W2. to General Deptt. No. 841 dt 27-1-45

Issued
dd
27/1

Submitted after issue.

File in S. Kanara 1/43.

dd
29/1

P.A.

S Kanara 1/43.
31/1/45

Letter.

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From

Rao Bahadur M. G. Chandavarkar,
District Government Pleader, Kanara,
Karwar.

To

The Surgeon General with the Government of
Bombay, Bombay.

Subject:- Civil Appeal No. 11 of 1945
Dr. C.H.Patil.. Vs. The Province
of Bombay.

No. 32 of 1945. Karwar, 7th February 1945.

I have the honour to forward herewith a copy of the notice ~~served~~ in the above appeal served on me yesterday (6.2.1945) together with an uncertified copy of the memorandum of appeal as required under Rule 136 of the Law Officers Rules for taking further action as per Rule 137 of the said Rules.

The certified copies of judgment and decree of the lower court have already been forwarded to you under this office letter No. 286 of 12-12-1944. This is a fit case for the defence and hence the necessary sanction for the defence of the appeal may kindly be obtained. There is no necessity of filing the cross objections.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
132 ✓
File No.
Sub No.
Branch
A.I. 2 45

Sd. M. G. Chandavarkar.
District Government Pleader,
Kanara.

No. 33 of 1945.
Karwar, 7th February 1945.

Copy with a copy of the grounds in appeal in question forwarded with compliments to the Remembrancer of Legal Affairs, Bombay.

The Surgeon General's File No. 231(10)A is also sent herewith as desired by him in his Memo. No. 794 of 25-1-45.

M. G. Chandavarkar

District Government Pleader, Kanara

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Civil Appeal No. 11 of 1945.

In the District Court of Kanara, Karwar.
(Civil Suit No. 194-1942 of Karwar F.C.Sub Judge's Court)

Dr. Chanagowda Mallangowda Patil, Lingayat, Medical Practitioner , Karwar. Appellant(original Plaintiff)

vs.

The Province of Bombay. .. Respondent(Original defendant).

Claim Rs. 1,000/- for all purposes.

The appellant begs to appeal against the decree dated 22-11-1944 and signed on 2-12-1944 by Mr. H.P.Suryawanshi, First Class Sub Judge, Karwar in the above suit on the following

Grounds.

1. The decree appealed against is contrary to law and facts of the case.
2. Plaintiff's suit has been wrongly dismissed.
3. It is wrongly held that the order to relieve plaintiff of his duties as S.M.S. Officer was not illegal and void.
4. The bond Ex. 26 has been entirely misconstrued.
5. The admitted fact that plaintiff was found unfit for military duty was quite sufficient to absolve him from the conditions of the bond.
6. There was no condition in the bond that plaintiff should have agreed to undergo operation to render himself fit for military service.
7. The order of the Surgeon General to that effect was quite illegal and not binding on plaintiff.
8. The very fact that B category was introduced recently and long after plaintiff passed the bond exhibit 26, it was clear that plaintiff could not be forced to accept it.
9. The order of the Surgeon-General requiring plaintiff to serve in B. category was wholly illegal and not binding on plaintiff.
10. The Sub Judge was wrong in going beyond the strict terms of the bond Ex. 26.
11. It was clearly wrong to hold that the question of plaintiff's dismissal could not be gone into by the Civil court.
12. The Sub Judge failed to see that plaintiff's dismissal rested wholly on the terms of the bond and not under the Government of India Act.
13. The findings cited for defendant have been misread and misinterpreted.

14. Plaintiff was not liable to be dismissed or to pay the amount of the bond, in view of the terms of the bond and the evidence.

15. The order to recover Rs. 1000/- from plaintiff was illegal and void.

16. Under any circumstances plaintiff was entitled to the refund and declaration prayed for.

17. Proper and necessary issues have not been raised.

18. The legal aspect of the case have not been properly considered.

19. The order as to costs is not proper.

Presented on 4-1-1945.

Sd. R. V. Gangolli, Pleader for the appellant.

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133

No. 13)2

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 15th February 1945.

Subject:-Civil Appeal No.11 of 1945 in Civil Suit No.194 of 1942.

MEMORANDUM.

With reference to his endorsement No.33, dated the 7th February 1945, forwarding the Surgeon General's file No.231(10)A, the District Government Pleader, Kanara, is requested to state whether he would require the file in connection with the appeal.

dc

O/c for Remembrancer of Legal Affairs.

Issued
15/2

To

The District Government Pleader,
Kanara, at Karwar.

Submitted for signature
15/2

S.

15/2 K.S. dc 15/2

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IT IS REQUESTED THAT, IN FUTURE COMMUNICATIONS ON THIS SUBJECT, THE NO. AND DATE OF THIS LETTER, AND THE DISTINGUISHING LETTERS ABOVE THE NO. AS GIVEN OPPOSITE, MAY BE QUOTED, AND THE REPLY ADDRESSED TO
THE SURGEON-GENERAL
WITH THE GOVT. OF BOMBAY, BOMBAY I.

TEL. ADDRESS:—HOSPITALS BOMBAY.
TELEPHONE No. 27903

No. S.231(10)/6151/43 1945.

OFFICE OF THE SURGEON-GENERAL
WITH THE GOVT. OF BOMBAY:
BOMBAY, 19th February 1945.

FROM

Immediate

THE SURGEON-GENERAL
WITH THE GOVERNMENT OF BOMBAY,
BOMBAY NO. I

TO

The Remembrancer of Legal Affairs,
Legal Department, Bombay.

TRANSMITTARY TO GOVERNMENT
LEGAL DEPARTMENT
F No. 158
Sub No. 20-2-45
Branch

SUBJECT :— Civil Appeal No.11 of 1945.
Mr.C.M.Patil.. vs. The Province of Bombay.

Sir,

Reference correspondence ending with G.R,L.D.No.192 dated 8.1.1945.

I forward a copy of letter,No.32,dated 7.2.1945,from the District Government Pleader, Kanara, Karwar, together with its accompaniments. Mr.C.M.Patil, Ex.S.M.S. , Plaintiff in Civil Suit No.194 of 1942 in the Court of the First Class Sub-Judge, Karwar, has appealed against the Judgment of the First Class Sub-Judge. The District Government Pleader,Karwar, is of the opinion that this is a fit case for defence.

He.....

He has, however, stated that there is no necessity of filing cross objections. The District Government Pleader received notice of the above appeal on 6.2.1945 and his letter quoted above was received in this office on 12.2.1945. As the date of hearing of the appeal was fixed for 15th instant and as the time at my disposal was very short , the District Government Pleader, Karwar, has been authorised by me to defend the appeal in anticipation of the sanction of Government vide copy of this office endorsement, No.S.231(1O)/6151/A, dated 14.2.1945. enclosed. I request that the action taken by me may be confirmed and the necessary orders to defend the appeal may be issued to the District Government Pleader, Karwar. Uncertified copies of the judgment and decree are already available with the Remembrancer of Legal Affairs. The District Government Pleader has been requested to furnish this office with copies of such of the exhibits or relevant portions thereof as he considers should be submitted to the Remembrancer of Legal Affairs. These will be forwarded on receipt.

K B Kamath

GNM.19.2. For Surgn.Genl.with the Govt. of Bombay.

ಳ ಳ ಲಾ. 12-1-45

Civ. A 145 k.

Appeal 11-45

79

1931—7,500—7-42—R4*

B. R., J. D., No. 8935, dated 21-10-19 and 3333, dated 22-12-21,
from the Regr. H. C., A. S., Bombay. C. P. C. Schedule I, Appendix G, No. 6.]

ಅಪೀಲಿನ ಸುನಾವಣೆಗಾಗಿ ನೇಮಿಸಿದ ದಿವಸವನ್ನು ಕುರಿತು ರಿಸ್ಪೊಂಡೆಂಟನಿಗೆ ನೋಟೀಸು (ಆ. ೪೧, ಕಾ. ೧೪).

(ಫಾರ್ಮ ನಂಬರು ೫, ಪರಿಶಿಷ್ಟಗ, ಶಿಡ್ಯೂಲ ೧.)

ಕಾನಡಿ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ

ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಕಾರವಾರ ಇಲ್ಲಿ. ನಿ॥

ಕಾರವಾರ ದಿವಾಣಿ ಮುಕದಮೆ ನಂಬರು ಸನ್ ೧೯೪೪ ನೇ ಪೈಕಿ

ಅರ್ಜುನ ಶಿವನಪ್ಪ ನಾಯಕ ಮಲ್ಲಪ್ಪ ನಾಯಕ, ಪಾಟೀಲ, ಕಾರವಾರ } ಅಪೀಲೆಂಟ.

ವಿರುದ್ಧ

ಬಸಪ್ಪ ಮೈಲಪ್ಪ ನಾಯಕ (ಮೂಲ ಅರ್ಜಿದಾರನ ಕಾನೂನುವಾರಸುದಾರರು) ರಿಸ್ಪೊಂಡೆಂಟ.

ಕಾರವಾರ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೪ 4—11 ತಿಂಗಳಿನ

ಮುಖಾಂತರ—

22 ತಾರೀಖಿನ ಮೇಲೆ ಅಪೀಲು

ಬೇಲೀಫನ ಹೆತ್ತರ— ರಿಸ್ಪೊಂಡೆಯುನಾದ

ಬಸಪ್ಪ ಮೈಲಪ್ಪ ನಾಯಕ ಇವನಿಗೆ.

ತಾರೀಖು—

ನಿನಗೆ ನೋಟೀಸು ಕೊಡುವದೇನಂದರೆ, ಈ ವ್ಯಾಜ್ಯದಲ್ಲಿ ಕಾರವಾರ ಕೋರ್ಟಿನಿಂ

ನಾರುರ.

ಮಾಡಲ್ಪಟ್ಟ ಹುಕುಮನಾಮೆಯ ಮೇಲೆ ಈ ಮೇಲಿಂದ ಇವನಿಂದ
ಅಪೀಲ ಮಾಡಲ್ಪಟ್ಟಿದ್ದು ಅದು ಈ ಕೋರ್ಟಿನಲ್ಲಿ ರಜಿಷ್ಟರು ಮಾಡಲ್ಪಟ್ಟಿದೆ, ಮತ್ತು ಈ ಅಪೀಲಿನ ಸುನಾವಣೆಯ
ಬಗ್ಗೆ ಸನ್ ೧೯೪೫ ನೇ ಇಸವಿಯ ಫೆಬ್ರುವರಿ ತಿಂಗಳಿನ 15 ತಾರೀಖು ಈ ಕೋರ್ಟಿನಿಂದ
ನೇಮಿಸಲ್ಪಟ್ಟಿದೆ.

1 ನೀನು ಸ್ವತಃ ಯಾ ನಿನ್ನ ವಕೀಲನು ಯಾ ಅಪೀಲಿನಲ್ಲಿ ನಿನ್ನ ಪರವಾಗಿ ಕೆಲಸ ನಡಿಸಲಿಕ್ಕೆ ಕಾಯದೆಯಿಂದ
ಅಧಿಕಾರ ಪಡೆದಂಥ ಬೇರೊಬ್ಬ ಮನುಷ್ಯನು ನಿನ್ನ ಬಗ್ಗೆ ಹಾಜರಾಗದಿದ್ದರೆ, ನಿನ್ನ ಪರೋಕ್ಷದಲ್ಲಿ ಅಪೀಲಿನ
ಸುನಾವಣೆಯಾಗಿ ನಿರ್ಣಯವಾಗುವದು.

ಸಮಕ್ಷ ಪ್ರತಿಜ್ಞೆಯ ಮೇಲೆ

ತಾರೀಖು—

ಈ ಹೊತ್ತು ಸನ್ ೧೯೪೫ ನೇ ಇಸವಿಯ ಫೆಬ್ರುವರಿ ತಿಂಗಳ 12 ನೇ
ತಾರೀಖಿನ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ನಾರ್ಥ ರ.

Received on 6-2-1945.
Subramanyam
District Govt. Pleader, Kanara.

ನೋಟು.—ಅದುಲ್ ಬಜಾವಣೆಯನ್ನು ನಡಿಸಲಿಕ್ಕೆ ಹುಕುಮು ಮಾಡಲ್ಪಟ್ಟಿದ್ದರೆ, ಅದನ್ನು ಈ ನೋಟೀಸಿನಲ್ಲಿ ತಿಳಿಸಬೇಕು.

8/ 129-13

Copy of letter No.32 dated 7.2.1945 from Rao Bahadur M.G.Chandavarkar, District Government Pleader, Kanara, Karwar, to the Surgeon General with the Government of Bombay.

Subject:- Civil Appeal No.11 of 1945.
Dr.C.M.Patil, vs. the Province of Bombay.

I have the honour to forward herewith a copy of the notice in the above appeal served on me yesterday (6.2.1945) together with an uncertified copy of the memorandum of appeal as required under Rule 136 of the Law Officers Rules for taking further action as per Rule 137 of the said Rules.

The certified copies of judgment and decree of the lower court have already been forwarded to you under this office letter No.286 of 12.12.44. This is a fit case for the defence and hence the necessary sanction for the defence of the appeal may kindly be obtained. There is no necessity of filing the cross objections.

Civil Appeal No.11 of 1945.

In the District Court of Kanara, Karwar.

(Civil Suit No.194-1942 of Karwar F.C.Sub.Judge's Court) Dr.Chanabasgowda Mallanagowda Patil, Lingayat, Medical Practitioner, Karwar. Appellant (Original Plaintiff).

Vs.

The Province of Bombay.....Respondent (Original defendant).

Claim Rs.1,000/- for all purposes.

The appellant begs to appeal against the decree dated 22-11-44 and signed on 2-12-44 by Mr.H.P.Suryavandhi, First Class Sub Judge, Karwar, in the above suit on the following

grounds.

1. The decree appealed against is contrary to law and facts of the case.
2. Plaintiff's suit has been wrongly dismissed.
3. It is wrongly held that the order to relieve plaintiff of his duties as I.M.S. Officer was not illegal and void.

4. The bond Ex.26 has been entirely misconstrued.
5. The admitted fact that plaintiff was found unfit for military duty was quite sufficient to absolve him from the conditions of the bond.
6. There was no condition in the bond that plaintiff should have agreed to undergo operation to render himself fit for military service.
7- The order of the Surgeon General to that effect was quite illegal and not binding on plaintiff.
8. The very fact that B category was introduced recently and long after plaintiff passed the bond Exhibit 26, it was clear that plaintiff could not be forced to accept it.
9. The order of the Surgeon General requiring plaintiff to serve in B category was wholly illegal and not binding on plaintiff.
10. The sub judge was wrong in going beyond the strict terms of the bond Ex.26.
11. It was clearly wrong to hold that the question of plaintiff's dismissal could not be gone into by the Civil court.
12. The sub judge failed to see that plaintiff's dismissal rested wholly on the on the terms of the bond and not under the Government of India Act.

13. The rulings cited for defendant have been misread and misinterpreted.
14. Plaintiff was not liable to be dismissed or to pay the amount of the bond, in view of the terms of the bond and the evidence.
15. The order to recover Rs.1000/- from plaintiff was illegal and void.
16. Under any circumstances plaintiff was entitled to the refund and declaration prayed for.
17. Proper and necessary issues have not been raised.
18. The legal aspect of the case have not been properly considered.
19. The order as to costs is not proper.

....

Presented on 4.1.1945.
Sd.R.V.Gamoli, Pleader for the appellant.

Suits.

Kanara.

For a declaration that the order of the dismissal of Dr. V. M. Patil, S. M. S., is illegal.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1679
Bombay Castle, 2nd March 1945.

Read Government Resolution, Legal Department, No.192, dated the 8th January 1945,

Letter from the Surgeon-General, with the Government of Bombay, No.S.231(10)/6151A, dated the 19th February 1945 - Forwarding a copy of letter No.32, dated the 7th February 1945, from the District Government Pleader, Kanara at Karwar, together with its accompaniments and stating that the plaintiff in the suit noted in the margin has filed an appeal No.11 of 1945 in the Court of the District Judge, Kanara, against the decision of the First Class Sub-Judge, Karwar, dated the 22nd November 1944, and requesting sanction to the defence of the appeal.

In the Court of the First Class Sub-Judge at Karwar.	
Civil Suit No.194 of 1942.	
Dr. Channappa Gowda Mallan Gowda Patil .. .. Plaintiff;	
versus.	
The Province of Bombay, ... Defendant.	
Claim - Rs. 1,000 for all purposes.	

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No.11 of 1945 in the Court of the District Judge, Kanara, at Karwar, on the lines of the brief accompanying Government Resolution, Legal Department, No.5317, dated the 5th August 1943.

By order of the Governor of Bombay,

for P. N. MOOS,
Secretary to Government.

The General Department,
The Surgeon-General with the Government of Bombay,
The Collector of Kanara,
The District Government Pleader, Kanara at Karwar.

Letter.

From

Rao Bahadur M. G. Chandavarkar,
District Government Pleader, Kanara, Karwar.

To

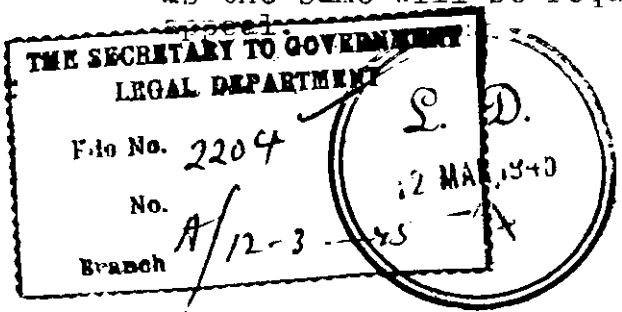
The Remembrancer of Legal Affairs,
Bombay.

Subject:- Civil Appeal No. 11 of 1945 in Civil Suit No. 194 of 1942.

No. 66 of 1945. Karwar, 8th March 1945.

With reference to your Memo No. 1572 dated the 15th February 1945, I have the honour to request you kindly to return the Surgeon General's file No. 231(10)A, as the same will be required in connection with the above appeal.

M G Chandavarkar
District Government Pleader,
Kanara.



87 24 137

No. 2025
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 14th March 1945.

Subject:- Civil Appeal No. 11 of 1945 in Civil Suit No. 194 of 1942.

MEMORANDUM.

With reference to his letter No. 66 dated the 8th March 1945, the District Government Pleader, Kanara, is informed that the Surgeon General's file No. 231 (10) A is returned herewith as desired by him.

dr

pe For Remembrancer of Legal Affairs,

To

The District Government Pleader,
Kanara.

Issued dp 14/3

Submitted for signature

2. The D.G.P. wants the file back (p. 19 ante) The G.D. may also be informed that file is sent back to D.G.P. A copy is endorsed to G.D. - A.S.

MDR 13/3

dr 13/3

Copy to G.D. for information.

Submitted after issue

file in S. Kanara '/48.

ZBR
15/3

AS. for
15/3

S. Kan '/48
16/3

Letter.

89

From

Rao Bah[illegible]. G. Chandavarkar,
District Government Pleader, Kanara,
Karwar.

To

The Surgeon General
with the Government of Bombay.

Subject:- Civil Appeal No. 11 of 1945.

No. 186 of 1946. Karwar, 31st July 1946.

In continuation of my letter No. 172 of 11-7-1946, I have the honour to forward herewith certified copies of decree and judgment in the above appeal together with all the papers (except those produced in the suit) relating to the suit as they are no longer required. Receipt of the same may kindly be acknowledged.

Sd. M. G. Chandavarkar,
District Government Pleader, Kanara.

No. 187 of 1946.
Karwar, 31-7-1946.

Copy with copies of judgment and decree in the above appeal forwarded with compliments to the Remembrancer of Legal Affairs, Bombay, for information

District Government Pleader
Kanara.

6750 1-
A16-8-46

Submitted with pp (S. Kan 1/43)

6/8 AS

Karwar Civil Appeal No 11 of 1965 is dismissed with costs. The result of brief formal order may be recorded.

6/8/66

AAZR RK 6/8.

7/8.

Received on 4-1-1945.
Registered on 5-1-1945.
Decided on 5-7-1946.
Duration: 1 year, 6 months, 1 day.

15
91

Exhibit no. 7.

In the District Court of Kanara, at Karwar.

Appeal No. 11 of 1945
from decree in civil suit no. 194 of 1942 of the Court of the Civil Judge (Senior Division) Mr. H.P. Suryavanshi of Karwar.

Pleaders.

Mr. Gangolli. — Dr. Channapgowda Mallangowda Patil, Lingayat, Medical Practitioner, Karwar . . . . . Appellant (original Plaintiff)

against

Government Pleader. — The Bombay Province . . . . . Respondent (original Defendant)

Claim - Rs. 1000/-.

The action giving rise to the pfesent appeal was instituted by the Plaintiff-appellant for a declaration to the effect that the order to relieve him of his duties as S.M.S. Officer was illegal and void and hence not binding on him and that he still continued as S.M.S. Officer of the Bombay Medical Department being entitled to the salary legally payable to him
P.2. until he was * taken back on duty. He also prayed for a declaration to the effect that the order to recover Rs. 1000/- from him was illegal and void and for refund of Rs. 1000/- to him illegally recovered from him by the Defendant-respondent with coercive measures, together with the costs from it.

2. It was alleged on behalf of the Plaintiff-appellant that he was appointed S.M.S. Officer and, as such, he executed an agreement in March 1937 in favour of the Defendant-respondent. It was further alleged that he was to serve on military duty according to one of the terms of the said agreement, that in case of default and breach of any of the terms mentioned in the said agreement his services were terminated and that he was required to pay a sum of Rs. 1000/-. Furthermore it was alleged that he was bound to serve according to the terms of

the agreement on military duty except in case of illness which rendered him unfit for military service duly certified by a Commissioner Medical Officer, that the Medical Board found him unfit for military duty without an operation, that he declined to undergo operation, that therefore the Surgeon General relieved him of his duty in September 1941 and -- ultimately recovered a sum of Rs. 1000/- from him as penalty by coercive measures.

3. The Defendant-respondent is the Bombay Province. The Plaintiff's claim was resisted on behalf of the Defendant-respondent. Its main defences were three. Firstly, it was contended that the Plaintiff held office at the pleasure of the Crown and hence he could be discharged from service at any time and that if he was aggrieved by the order terminating his services, his only remedy was by way of an appeal to the higher authority and not by a civil suit. The second contention was that the Plaintiff committed a default in the performance of the duties and breach of the conditions stipulated in the bond and hence the order to terminate his services was proper and lawful. Thirdly, it was contended that the sum of Rs. 1000/- was lawfully recovered from him in accordance with the terms of the bond and hence he was not entitled to the refund thereof.

4. The lower court in its exhaustive and careful judgment held that the question of dismissal of the Plaintiff could * *O.P.S. not be gone into by the Civil Court, that the order to relieve him of his duties as S.M.S. Officer was legal and proper and that the order to recover Rs. 1000/- was also valid and proper. It, therefore, held that he was not entitled to the declaration and the refund of the amount. Accordingly, the Plaintiff was non-suited.

5. Being dissatisfied with the result of the suit, the Plaintiff has now come in appeal.

6. The following points were pressed in the appeal :-

(1) Whether the question of dismissal of the Plaintiff can

93 ~~157~~ 2

be gone into by the Civil Court as contended by the Plaintiff-appellant ?

(2) Is it proved that the order to recover Rs. 1000/- from the Plaintiff is illegal and void as alleged by the Plaintiff ?

(3) Whether the Plaintiff is entitled to the declarations and the refund of the amount sought

7. I answer all the points in the negative.

R e a s o n s.

8. This was a suit instituted by the Plaintiff-appellant for two declarations and refund of Rs. 1000/- from the -- Defendant-respondent.

9. The main facts of the case were not in dispute and were as follows. The Plaintiff-appellant was appointed a Subordinate Medical Service Officer after he passed L.C.P.S. examination. Thereupon as required by the rules he passed the agreement exhibit no. 26 dated March 19, 1937 in favour of the Secretary of State for India in Council. One of the terms of the bond is that the Plaintiff-appellant undertook to serve for a period of 10 years in the Subordinate Medical Department in the capacity of a Subordinate Medical Service Officer and to obey willingly and submissively at all times all the lawful orders and commands of the Secretary of State, his successor and of any Commissioned Medical Officer. Further, he agreed to serve when required on military duty. The bond further provided that in case of any default or breach
*O.P.4. of any of the * conditions of the bond which resulted in the termination of his services before the expiration of the period, he would pay to the Government a sum of Rs. 1000/-.

10. After the Second World War broke out the Surgeon General to the Government of Bombay directed the Plaintiff to hold himself in readiness for military duty by his order dated June 15, 1940 vide exhibit no. 38A. Thereupon the Plaintiff intimated that he was suffering from hernia and

internal and external piles which rendered him incapable of serving on military duty and hence he should be exempted from the said duty, vide his application exhibit no. 71 dated June 21, 1940. On June 27, 1940 he was informed by the Surgeon General that he could not be exempted from military duty, vide his reply exhibit no. 40. On July 10, 1940 the Plaintiff was directed to report himself on military duty by August 1, 1940, vide exhibit no. 41. On July 15, 1940 the Civil Surgeon, Dharwar ordered the Plaintiff to present himself for examination as to his physical fitness on military duty, vide exhibit no. 43, the memorandum of the Civil Surgeon, Dharwar. Accordingly the Plaintiff appeared before him and got himself examined. On examination the Civil Surgeon, Dharwar, found the Plaintiff to be unfit for medical duty, vide exhibit no. 76 his certificate dated July 18, 1940. Subsequently the Civil Surgeon Dharwar made the report exhibit no. 27 dated July 24, 1940 to the effect that the Plaintiff could be treated for his piles by operation or injection and that he had been asked whether he was prepared to undergo treatment for his piles, but that no reply had been received till then. Thereafter, the Civil Surgeon, Dharwar, reported on September 3, 1940 that the Plaintiff refused to take treatment by operation or injection on the ground that he was nervous. The Surgeon General in reply to this report stated in his memorandum exhibit no. 29 dated September 7, 1940 that in the circumstances he should be deemed to be physically fit and should be directed to hold himself in readiness for joining military service. Thereupon the Plaintiff applied to the Civil Surgeon requesting him to allow him to be examined by the Medical Board, vide his application exhibit no. 30 dated September 15, 1940. Accordingly, the Plaintiff was examined by the Medical Board which opined that the Plaintiff was unfit for military duty, vide its opinion exhibit no. 31 dated October 4, 1940. Thereupon * the Plaintiff

95

declined to undergo the operation on the ground that he was nervous, vide his letter exhibit no. 32 dated October 11, 1940 addressed to the Civil Surgeon, Dharwar. Subsequently, a -- memorandum was issued by the Indian Medical Directorate, Simla, on October 14, 1940 laying the policy regarding the disposal of Indian personnel unfit for general service overseas.

11. On April 18, 1941 the Plaintiff was again examined by the Medical Board which opined that he was fit for inclusion in category "B" service, vide exhibit no. 33 the certificate of the Medical Board. Then the Surgeon General issued an order to the Plaintiff that the Medical Board had found him fit for inclusion in category B and hence he would be deputed on military duty, vide the order exhibit no. 56 dated April 23, 1941. In reply to this order ~~the~~ Plaintiff made an application exhibit no. 66 dated May 6, 1941 to the Surgeon General, Bombay, expressing his willingness to join the military duty on a condition that in case of failure of his health he should be permitted to revert to his civil -- duties. In the alternative he asked for 3 months' leave to recoup his health. On May 14, 1941 the Surgeon General informed the Plaintiff that he should join the military duty unconditionally, vide his order exhibit no. 61. Further, the order stated that if his health failed on military duty the Army Department would see whether he should revert or not; and that the leave could not be sanctioned. Thereupon the Plaintiff applied for being examined by the Military Medical Board offering also to resign his post. Then, the Surgeon General gave a reply exhibit no. 63 dated May 23, 1941 intimating that his request for further medical examination or -- resignation could not be granted unless he paid first -- Rs. 1000/- in accordance with the terms of the bond. It appears that the Plaintiff declined to obey the order of the Surgeon General. Thereupon it appears that the Plaintiff presented a memorial to the Government of Bombay for setting

aside the order of the Surgeon General and that his memorial was rejected, vide exhibit no. 65 dated July 10, 1941. Then, the Surgeon General by his final order exhibit no. 37 dated September 18, 1941 terminated the Plaintiff's service for breach of the * condition of serving on military duty. *O.P.6. The order further stated that a sum of Rs. 1000/- due as penalty should be recovered as arrears of land revenue from the Plaintiff-appellant. It appears that the penalty of Rs. 1000/- was recovered from him and he was relieved of his duties on September 22, 1941. So far the facts were not in dispute.

12. Subsequently, on October 10, 1941 the Plaintiff gave a notice exhibit no. 24 to the Province of Bombay and he instituted the present suit on November 21, 1942 for declarations and refund of the sum of Rs. 1000/- on the allegations as detailed above. The Plaintiff's claim was resisted mainly on 3 grounds as noticed above on behalf of the Government of Bombay. The lower court repelled all the contentions of the Plaintiff-appellant accepting those of the Defendant. The findings of the lower court as detailed above were challenged in the appeal. It may be noted in this connection that the lower court found that the order to relieve the Plaintiff of his duties as S.M.S. Officer was not illegal and void as alleged by the Plaintiff. Now, this finding was not challenged in the appeal. However, the question of jurisdiction by the Civil Court or otherwise and the illegality or otherwise of the order to recover Rs. 1000/- were challenged in the appeal.

13. The lower court was of opinion that under section 240(1) of the Government of India Act, 1935, every Government servant who is a member of the civil service in India held the office during the pleasure of the Crown, that there was no right of action against Government in a court of law for his dismissal from service and that his proper remedy in such a case was by administrative process and not by a law suit.

97

In support of the conclusion it relied on the rulings in the case of Krishnaji v. The Secretary of State for India, 39 Bombay Law Reporter, page 807 and the case of Shenton v. Smith (1895) A.C. 229. The Bombay ruling relied on by the lower court fully supports the view taken by the lower court. But, this view was challenged for the Appellant. It was urged on behalf of the Appellant that in the present case the parties were governed by the terms of the agreement exhibit no. 26, that according to the terms of the said agreement the Plaintiff
*O.P.7. appellant's period of * service was ten years and that the Defendant could not remove him from service during the said period. Further, it was contended that the lower court wrongly applied the provisions of section 240(1) of the Government of India Act to the facts of the present case and that the principle laid down in the rulings relied on by the lower court supported the Plaintiff's case rather than that of the Defendant. On the contrary, it was argued by the learned Government Pleader in support of the finding of the lower court. To me it appears that the contentions raised for the Appellant are not well-founded.

14. Now, under section 96B of the Government of India Act, 1915, every servant of the Crown holds his office during the pleasure of the Crown. This section is equivalent to section 240 of the Government of India Act, 1935. Section 240(1) runs as follows, "Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure." Now, according to the said section every Government servant holds his office during the pleasure of the Crown except as expressly provided by the said Act. No provision in this act was brought to my notice that the Government servant holds his office under the contract entered into by him with the Government. At this stage it may be noted that even the Plaintiff has not made out this case in his plaint. In par

of the plaint he has stated specifically that he was appointed S.M.S. Officer after passing his L.C.P.S. examination and thereafter as required by the rules he passed the usual bond exhibit no. 26 on March 19, 1937. Thus, it is not his case that his appointment originated with the terms of the contract embodied in exhibit no. 26; but according to his case his service was a prior one and he passed the bond according to the rules of service. Thus, his case as set up in the plaint is not one of contractual relationship. In other words, his present contention that there was a contractual relationship between the Plaintiff and the Crown is clearly an afterthought and untenable.

15. Next, it was conceded on both sides that if * it was held that there was a contractual relationship between the Appellant and the Crown, then the Civil Court had jurisdiction to entertain the present suit. Further, it was conceded that if it was otherwise, i.e., if it was held that every Government servant held his office during the pleasure of the Crown, then his remedy was not by a suit; but by making appeals to the superior officers on removal. This view is covered by the decision in R. Venkata Rao v. The Secretary of State for India in Council, 39 Bombay Law Reporter page 699 (P.C.). In that case it is laid down, "Under section 96B of the Government of India Act, 1915, every servant of the Crown holds his office during the pleasure of the Crown, and there is no right of action against Government in a court of law for his dismissal from service, whether rightful or wrongful, or for the breach of any of the rules made thereunder on the part of Government. His proper remedy in such a case is by administrative process and not by a law suit. The rules framed by the Secretary of State for India in Council, or by any other authority under section 96B, relating to the conditions of service, pay, allowances, discipline, conduct, etc. of Government servants, do not form a contractual relationship between the Crown and its servants, but they are mere directions given by the

* O.P.S.

Crown to the administrative authorities for their general guidance." In this Privy Council case the case of Shanton v. Smith relied on by the lower court is followed. Now, according to the dictum laid down in the abovementioned Privy Council case the rules made by the Government relating to the conditions of service, pay, allowances etc. of -- . Government servants do not form a contractual relationship between the Crown and its servant. But they are mere directions given by the Crown to the administrative authority for their general guidance. Similarly in the present case the bond exhibit no. 26 passed in accordance with the rules -- framed by the Medical Department laying down the conditions of service, discipline and conduct of the Medical Officers. Hence, it does not form any contractual relationship between the Crown and its servant. Thus, the contention raised for the Appellant is untenable and the Privy Council decision cited above is a complete answer to the contention. Similar

*O.P.9. view is held in the case of Krishnaji * v. The Secretary of State for India, 39 Bombay Law Reporter, page 807. It is held therein, "Except in so far as the Crown has deprived of its prerogative in some way expressly recognised by law, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown, and all, in general, are subject to dismissal at any time without cause assigned; and no action for wrongful dismissal can be entertained even though a special contract is proved. The power to dismiss an employee at the pleasure of the Crown involves a power to refuse to employ a person accepting an offer of employment." Thus, this ruling goes further and lays down that the prerogative of the Crown extends even to the cases of special contracts. In that case a special contract was proved. Still it was held that the appointments of the -- Government servants were at the pleasure of the Crown. In view of these clear authorities the contention raised for the Appellant is untenable. For the reasons stated above I

think that the lower court was justified in holding that the Civil Court has no jurisdiction to inquire into the question of dismissal of the Plaintiff and his remedy was by way of an appeal on the administrative side and not by a law-suit.

16. In the view taken by me as above it necessarily follows that the orders of removal as well as to recover the amount of Rs. 1000/- from the Plaintiff are valid, inasmuch as the Plaintiff failed to obey the order of the Surgeon General to enter the military service of category B. As already pointed out above it is true that when the Plaintiff was ordered to enter military service in June 1940 he was found to be unfit for the military service by the Civil Surgeon, -- Dharwar, as well as by the Medical Board. Further, it is significant to note in this connection that the Plaintiff refused to undergo treatment for the disease either by an operation or injection. The ground assigned by the Plaintiff for the refusal was not convincing. He declined to undergo the treatment on the ground that he was rather nervous. Thus, he did not obey the order of the Surgeon General by not accepting * the military *O.P.10.
duty according to the terms of the bond.

17. Further, it may be noted that the India Medical Board issued a memorandum laying down the policy regarding the employment of Indian Medical Officers unfit for general service overseas. According to this policy physical standards are issued as a guide for Medical Officers. As per this policy the Surgeon General thought that the Plaintiff would be fit to serve in category B and hence he asked the Plaintiff to join the military duty in this category. This also he failed to do and hence the subsequent action of removal and recovery of the sum took place.

18. Now, it was urged for the Appellant that the service category B was entirely a new one not having been in existence at the time of the bond exhibit no. 26, that therefore the Plaintiff was not bound to obey the said order and hence there was no breach of the conditions of the agreement exhibit no. 26

(9/ 47

and therefore the view taken by the lower court was wrong. On the contrary, it was argued for the Crown in support of the finding of the lower court urging that the service category B was not a new service; but it was a military duty.

19. As already pointed out above according to the terms of the bond exhibit no. 26 the Plaintiff is required to serve on military duty. Now, the details of the military duty are not given in the said bond. The service category B as mentioned in exhibit no. 34 is a military duty. That being so, there is no substance in the contention raised for the Appellant. From the evidence it is quite obvious that the Plaintiff disobeyed the order of the Surgeon General to join the military service category B. In the Second Great World War Government was in need of Medical Officers and hence the Surgeon General insisted upon securing the service of th Plaintiff. Instead of obeying the reasonable order of the Surgeon General, the Plaintiff avoided the same by putting forth some excuse or other. For these reasons to me it appears that there was a clear breach of the provisions of the agreement entered into by the Plaintiff with the Government. That being so, the subsequent order of removal and recovery of the amount were quite justified. For these -- reasons I agree with the finding of the lower court on this point also.

*O.P.11.

20. In view of my findings on the above two issues, it necessarily follows that the Plaintiff is not entitled to the declarations as well as to refund of the amount as claimed by him.

21. In the result, the appeal fails.

Order.

The decree of the lower court is affirmed and the appeal is dismissed with costs.

5th July 1946. Signed. P. H. Gunjal.

District Judge.

163
103

1248—3,788—11-44—R(p)*

Civ. A 49 k.

ಅಪೀಲಿನೊಳಗಿನ ಹುಳುಮುಖಾಮುಖಿ (ಆರ್ಡರ ೪೧, ರೂ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

ಕಾನಡಾ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಖ್ಯಾಮು ಕಾರಣಾಂತ ಇಲ್ಲಿ. ನಂ. 8

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು // ಗಳಿಗೆ ನೇ ಪೈಕಿ

ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ).

ರಿಸ್ಪಾಂಡೆಂಟ (ನೊದಲನೇ ಪ್ರತಿವಾದಿ)

ಕಾರಣಾರ್ಥ ಇದ್ದು ಸೀಲು ~~ಸೇ ಪರಗಣ ಸಬ್~~-ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ಗಳಿಗೆ ನೇ

ಇಸವಿಯ ನವಂಬರ ತಿಂಗಳ ೨೨ ನೇ ತಾರೀಖು ಕೊಟ್ಟ ಹುಕುಮಿನ ಸನ್ ಗಳಿಗೆ ನೇ

ಇಸವಿಯ ಹುಳುಮು ನಾವು ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡಿರುವುದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಪ್ರಕಾರವು ಇವನು

ಅಕ್ಟೋಬರ ೨೨ ತಾರೀಖಿನ ಹುಕುಮು ನಾವು ಮೇಲ ಕಾನಡಾ ಇಲ್ಲಿಯ

ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ಗಳಿಗೆ ಇಸವಿಯ ಡಿಸೆಂಬರ ೨೨ ತಾರೀಖಿನ ದಿವಸ ಸದರಿ ಕೋರ್ಟಿನಲ್ಲಿ ಮುಂತೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ಮೇ. ಮಿಲ್ಲರ್ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಮೇಸರ್ಸ ಕಾರಣಾರ್ಥ ಇವರ ಸಮಜ್ಞೆವಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂಕಡ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಸದರಿ ಅಪೀಲು ಕೊಟ್ಟಾಗಿನ ಕಾಲಕ್ಕೆ ಅಪೀಲೆಂಟನು ಕೊಡಬೇಕಾಗಿರುವ ಸೆಕ್ಯುರಿಟಿಯನ್ನು ಕೊಟ್ಟಿರುವದಾಗಿ ಕಾಣುತ್ತದೆ. ಆದ್ದರಿಂದ ಸದರಿ ಅಪೀಲು ಕೊಟ್ಟಾಗಿನ ಕಾಲಕ್ಕೆ ಅಪೀಲೆಂಟನು ಕೊಡಬೇಕಾಗಿರುವ ಸೆಕ್ಯುರಿಟಿಯನ್ನು ಕೊಟ್ಟಿರುವದಾಗಿ ಕಾಣುತ್ತದೆ.

105

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಅಪ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು.	ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.
	ರೂ. ಆ. ಪೈ		ರೂ. ಆ. ಪೈ
೧. ಅಪೀಲಿನ ಜಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	93 12 -	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ		೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	1 14 -	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.	
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	1 8 -	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	
೫. 1000/- ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	50 - -	೫. 1000/- ರೂಪಾಯಿಗೆಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	50 - -
೬. ನಕಲ್ಲುಗಳ ಬಗ್ಗೆ ಫೀ	28 4 -	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ		೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು	
		೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	
ಒಟ್ಟು....	175 6 -	ಒಟ್ಟು....	50 - -

ಈ ಹೊತ್ತು ತಾರೀಖು ೨೨ ತಿಂಗಳು ಜುಲೈ ಸನ್ ೧೯೪೬ನೇ ಇಸವಿಯ ದಿನ

ಸಮ್ಮತಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅಪೆ.

ad. P.H. Gunjal
18-7-46
ಜಜ್ಜ.
Dist. Judge, Kanara

ad. G.A. Naik
ಕಾರಕೂನ.

ad. R.N. Hande
Bench clerk

ad. R.V. Ganpule
ಅಪೀಲೆಂಟ ವಕೀಲ.

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಪೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವವಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳ ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿರ್ಣಯವಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತವೆ.)]

Suits. 107 [illegible]

Kanara.

For a declaration that the order of the dismissal of Dr. C.M.Patil, S.M.S., is illegal.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 5576
Bombay Castle, 9th August 1946.

Read Government Resolution, Legal Department, No.1679, dated the 2nd March 1945.

Letter from the District Government Pleader, Kanara, No. 173, dated the 11th July 1946, stating that Civil Appeal No.11 of 1945 filed by the Plaintiff in the suit noted in the margin was decided by the District Judge, Kanara, on 5th July 1946 when the following order was passed:-

In the Court of the First Class Sub-Judge, at Karwar.
Civil Suit No.194 of 1942.
Dr. Channappa Gowda Mallan Gowda .. Plaintiff,
vs.
The Province of Bombay, ... Defendant.

Claim - Rs. 1,000 for all purposes.

"The decree of the lower Court is affirmed and the appeal is dismissed with costs".

Letter from the District Government Pleader, Kanara, No.187, dated the 31st July 1946, forwarding uncertified copies of the judgment and decree.

RESOLUTION.- The result of the appeal is recorded.

By order of the Governor of Bombay,

Original R. M. Mehta

R. M. MEHTA,
Assistant Secretary to Government.

To

The General Department,

The Surgeon General with the Government of Bombay,

The Collector of Kanara.

Ms.8.8. Submitted for signature
8/8

9/8

Issued
9/8

109 2
194

Letter.

From

M. G. Kasbekar, Esquire, B.A.(Hons). LL.B.,
District Government Pleader, Kanara,
Karwar.

To

The Surgeon General
with the Government of Bombay

Subject:- Civil Appeal No. 11 of 1945 in Civil Suit No. 194 of 1942.

No. 251 of 1946. Karwar, 20th September 1946.

I have the honour to enclose herewith a copy of Memorandum No. 6164 dated 10-9-1946 from the Remembrancer of Legal Affairs, Bombay, directing me to return the Surgeon General's file No. 230(10)-A, and to state that all the papers (except those filed in the suit) relating to the above suit have been returned to you under this office letter No. 186 of 31-7-1946. I would therefore request you kindly to arrange to forward the file in question to the Remembrancer of Legal Affairs, Bombay, at your early convenience, as desired by him.

8255
A 24/9/46

Sd. M. G. Kasbekar.

District Government Pleader,
Kanara.

No. 252 of 1946.
Karwar, 20th September 1946.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay, for information, with reference to his memorandum No. 6164 of 10-9-1946.

District Government Pleader,
Kanara.

1 115

No. S.231(10)/B of 1946.
Office of the Surgeon General
with the Govt.of Bombay,

Bombay, 7th Oct. 1946.

From
The Surgeon General
with the Government of Bombay,
Bombay No. 1.

To
The Remembrancer of Legal Affairs,
Bombay.

Subject:- Civil appeal No.11 of 1945 in Civil Suit No. 194 of 1942.

///

Reference your letter No.6164, dated 10th September 1946, to the District Government Pleader, Kanara, Karwar.

I send herewith this office file No.S.231(10)/A, dealing with the Civil appeal referred to above with certified copies of decree and judgement as desired.

2. The receipt of the documents may please be acknowledged and they may be returned to this office when no longer required.

Sd/- K.B.Kamath,
MVD.7/10. For Surgn:Genl:with the Govt.of Bombay.

No. S.231(10)/B of 1946.
Bombay, 7th October 1946.

Copy forwarded with compliments to the District Government Pleader, Kanara, Karwar, for information with reference to his letter No. 251, dated 20th September 1946.

2. The certified copies of decree and judgment in the above case with this office file No. S.231(10)/A, have been received in this office.

Sd/- K.B.Kamath,
MVD.7/10. For Surgn:Genl:with the Govt.of Bombay.

No.S.231(10)/B of 1946.
Bombay, 7th October 1946.

Copies submitted to -
(1) Government in the General Department,
(2) Government in the Legal Department,

with reference to Government Resolution, Legal Department, No. 5576, dated 9-8-1946.

V.D.Kamath

MVD.7/10. For Surgn:Genl:with the Govt.of Bombay.

IT IS REQUESTED THAT, IN FUTURE COMMUNICATIONS ON THIS SUBJECT, THE NO. AND DATE OF THIS LETTER, AND THE DISTINGUISHING LETTERS ABOVE THE NO. AS GIVEN OPPOSITE, MAY BE QUOTED, AND THE REPLY ADDRESSED TO
THE SURGEON-GENERAL
WITH THE Govt. OF BOMBAY, BOMBAY 1

TEL. ADDRESS: HOSPITALS BOMBAY
TELEPHONE No. 27803

No.S.231(10)/B OF 194 6. ~~43/196~~ 113

OFFICE OF THE SURGEON-GENERAL
WITH THE GOVT. OF BOMBAY:
BOMBAY. 7th Oct. 1946.

FROM

THE SURGEON-GENERAL
WITH THE GOVERNMENT OF BOMBAY,
BOMBAY No. 1

TO

The Remembrancer of Legal Affairs,
Bombay.

SUBJECT:—Civil appeal No.11 of 1945 in Civil Suit No. 194 of 1942.

SIR,

Reference your letter No.6164, dated 10th September 1946, to the District Government Pleader, Kanara, Karwar.

I send herewith this office file No.S.231(10)/A, dealing with the Civil appeal referred to above with certified copies of decree and judgement as desired.

2. The receipt of the documents may please be acknowledged and they may be returned to this office when no longer required.

THE S... GOVERNMENT
... DEPARTMENT
File 8714
Sub-No. A-8/10/46
Ex.

EVI.7/10.

V.D.Kamath
For Surgn:Genl:with the Govt.of Bombay.
ALA

A
8/10

Legal Deptt.

Subd.

ascertained G.P. does not wish the file.

Before issue Please see whether G.P does not require the file. Perusing note at p. 35 please.

The file sent by S.G. is not required in this Office. In its note at p. 35, G.P. wanted that the file in question should be returned to S.G. but this intention was not brought out in our memo at p. 37. The DGP ~~thought~~ (vide p. 39) that the file was required by us and he requested S.G. to send it to us. As the file ~~judgment & decree~~ is not required, ~~they~~ it may be returned to S.G. A letter is put up below for signature.

28/9/10

A.S. 9.10.46

No. 6859 ~~197~~ 115

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 10th October 1946.

To

The Surgeon General,
with the Government of Bombay,
Bombay No. 1.

Subject:- Civil Appeal No. 11 of 1945
in
Civil Suit No. 194 of 1942.

Sir,

I have the honour to return herewith file No. 231/(10)/A and the certified copies of judgment and decree as they are no longer required.

Your obedient servant,

for Remembrancer of Legal Affairs.

Issued
18P.
10/10

~~178~~
116.

G. D. papers returned under U.R. No. 6894 d. 11-10-46.

Issued
11/10

Subd. after wine.

2. Sir in S. Kanara 1/43.

~~2 A~~
12/10

A.S. Pr
12/10

S. Kara 1/43
14/10.